Sculpsit
CAROLUS Secundus
Dei Gratia, Angliæ, Scotiæ,
Franciæ, et Hiberniæ Rex,
Fidei Defen- sor, etc.

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CAROLUS Secundus
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Franciæ, et Hiberniæ Rex,
Fidei Defen- sor, etc.

Patriarcha:

OR THE

Natural Power

OF

KINGS.

By the Learned Sir *ROBERT FILMER*, Baronet.

Lucan. Lib. 3.

Libertas —— Populi, quem regna coercent
Libertate perit ——

Claudian.

Fallitur, egregio quiſquis ſub Principe credit
Servitium; nuſquam Libertas gratior extat
Quam ſub Rege pio ——

LONDON,
Printed, and are to be ſold by *Walter Davis* Book-binder, in *Amen-Corner*, near *Pater-noſter-row*, 1680.

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The COPY OF A LETTER

Written by the Late Learned

Dr. *PETER HEYLYN*, to Sir *Edward Filmer*, Son of the Worthy Author, concerning this Book and his other Political Diſcourſes.

SIR,

HOW great a Loſs I had in the death of my moſt dear and honoured Friend, your deceaſed Father, no man is

able to conjecture, but he that hath ſuffered in the like. So affable was his Converſation, his Diſcourſe ſo rational, his Judgment ſo exact in moſt parts of Learning, and his Affections to the Church ſo Exemplary in him, that I never enjoyed a greater Felicity in the company of any Man living, than I did in his: In which reſpects I may affirm both with Safety and Modeſty, that we did not only take *ſweet Counſel together, but walked in the Houſe of God as Friends*: I muſt needs ſay,

I was prepared for that great Blow, by the loſs of my Preferment in the Church of *Weſtminſter*, which gave me the opportunity of ſo dear and beloved a Neighbourhood; ſo that I loſt him partly before he died, which made the Miſery the more ſupportable, when I was deprived of him for altogether. But I was never more ſenſible of the infelicity, than I am at this preſent, in reference to that ſatisfaction, which I am ſure he could have given the Gentleman whom I am to deal with: His

His eminent Abilities in theſe Political Diſputes, exemplified in his Judicious Obſervations upon *Ariſtotles* Politiques; as alſo in ſome paſſages on *Grotius*, *Hunton*, *Hobbs*, and other of our late Diſcourſers about Forms of Government, declare abundantly how fit a Man he might have been to have dealt in this cauſe, which I would not willingly ſhould be betrayed by unskilful handling: And had he pleaſed to have ſuffered his Excellent Diſcourſe called *Patriarcha* to appear in Publick, it would have

have given ſuch ſatisfaction to all our great Maſters in the Schools of *Politie*, that all other Tractates in that kind, had been found unneceſſary.

Vide Certamen Epiſtolare. 386.

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ERRATA.

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CHAP. I.

That the first Kings were Fathers of Families.

(1) THE *Tenent of the Natural Liberty of Mankind, New, Plausible, and Dangerous.* (2) *The Question stated out of* Bellarmine: *Some Contradictions of his noted.* (3) Bellarmine's *Argument answered out of* Bellarmine *himself.* (4) *The Royal Authority of the* Patriarchs *before the Flood.* (5) *The dispersion of Nations over the World after the Confusion of* Babel, *was by entire Families, over which the Fathers were Kings.* (6) *and from them all Kings descended.* (7) *All Kings are either Fathers of their People,* (8) *Or Heirs of such Fathers, or Usurpers of the Right of such Fathers.* (9) *Of the Escheating of Kingdoms.* (10) *Of Re-*

gal and Paternal Power, and their Agreement.

SInce the time that School-Divinity began to flouriſh, there hath been a common Opinion maintained, as well by Divines, as by divers other Learned Men, which affirms,

Mankind is naturally endowed and born with Freedom from all Subjection, and at liberty to chooſe what Form of Government it pleaſe: And that the Power which any one Man hath over others, was at firſt beſtowed according to the diſcretion of the Multitude.

This Tenent was firſt hatched in the Schools, and hath been foſtered by all ſucceeding Papiſts for good Divinity. The Divines alſo of the Reformed Churches have entertained it, and the Common People every where tenderly embrace it, as being moſt plauſible to Fleſh and Blood, for that it prodigally deſtributes a Portion of Liberty to the meaneſt of the Multitude, who magnifie Liberty, as if the height of Humane Felicity were only to be found in it, never re-

remembring That the desire of Liberty was the first Cause of the Fall of *Adam.*

But howsoever this Vulgar Opinion hath of late obtained a great Reputation, yet it is not to be found in the Ancient Fathers and Doctors of the Primitive Church: It contradicts the Doctrine and History of the Holy Scriptures, the constant Practice of all Ancient Monarchies, and the very Principles of the Law of Nature. It is hard to say whether it be more erroneous in Divinity, or dangerous in Policy.

Yet upon the ground of this Doctrine both *Jesuites*, and some other zealous favourers of the *Geneva* Discipline, have built a perillous Conclusion, which is, *That the People or Multitude have Power to punish, or deprive the Prince, if he transgress the Laws of the Kingdom*; witness *Parsons* and *Buchanan*: the first under the name of *Dolman*, in the Third Chapter of his First Book labours to prove, that Kings have been lawfully chastised by their Commonwealths: The latter in his Book *De jure Regni apud*

Scotos, maintains A Liberty of the People to depoſe their Prince. Cardinal *Bellarmine* and *Calume*, both look aſquint this way.

This deſperate Aſſertion whereby Kings are made ſubject to the *Cenſures* and *Deprivations of their Subjects*, follows (as the Authors of it conceive) as a neceſſary Conſequence of that former Poſition of the ſuppoſed *Natural Equality and Freedom of Mankind, and Liberty to chooſe what form of Government it pleaſe.*

And though Sir *John Heyward*, *Adam Blackwood*, *John Barclay*, and ſome others have Learnedly Confuted both *Buchanan* and *Parſons*, and bravely vindicated the Right of Kings in moſt Points, yet all of them, when they come to the Argument drawn from the *Natural Liberty and Equality of Mankind*, do with one conſent admit it for a Truth unqueſtionable, not ſo much as once denying or oppoſing it; whereas if they did but confute this firſt erroneous Principle, the whole Fabrick of this vaſt Engine of *Popular Sedition* would drop down of it ſelf. The

The Rebellious Conſequence which follows this prime Article of the *Natural Freedom of Mankind* may be my Sufficient Warrant for a modeſt Examination of the original Truth of it; much hath been ſaid, and by many, for the *Affirmative*; Equity requires that an Ear be reſerved a little for the *Negative*.

In this DISCOURSE I ſhall give my ſelf theſe Cautions:

Firſt, I have nothing to do to medle with Myſteries of State, ſuch *Arcana Imperii*, or Cabinet-Councels, the Vulgar may not pry into. An implicite Faith is given to the meaneſt Artificer in his own Craft, how much more is it then due to a Prince in the profound Secrets of Government? The Cauſes and Ends of the greateſt politique Actions and Motions of State dazle the Eyes, and exceed the Capacities of all men, ſave only thoſe that are hourly verſed in the managing Publique Affairs: yet ſince the Rule for each men to know in what to obey his Prince, cannot be learnt without a relative Knowledge of thoſe Points wherein a Sovereign may

Command, it is neceſſary when the Commands and Pleaſures of Superiours come abroad and call for an Obedience, that every man himſelf know how to regulate his Actions or his Sufferings; for according to the Quality of the Thing commanded, an Active or Paſſive Obedience is to be yielded; and this is not to limit the Princes Power, but the extent of the Subjects Obedience, by giving to *Cæſar* the things that are *Cæſar's*, &c.

Secondly, I am not to queſtion, or quarrel at the Rights or Liberties of this or any other Nation; my task is chiefly to enquire from whom theſe firſt came, not to diſpute what, or how many theſe are; but whether they were derived from the Laws of *Natural Liberty*, or from the *Grace and Bounty of Princes*. My deſire and Hope is, that the people of *England* may and do enjoy as ample Privileges as any Nation under Heaven; the greateſt Liberty in the World (if it be duely conſidered) is for a people to live under a *Monarch*. It is the *Magna Charta* of this Kingdom, all other ſhews or pretexts of Liberty, are

but

but ſeveral degrees of *Slavery*, and a *Liberty* only to deſtroy *Liberty*.

If ſuch as Maintain the Natural Liberty of Mankind, take Offence at the Liberty I take to Examine it, they muſt take heed that they do not deny by Retail, that Liberty which they affirm by Whole-ſale: For, if the *Theſis* be true, the *Hypotheſis* will follow, that all men may Examine their own Charters, Deeds, or Evidences by which they claim and hold the Inheritance or Freehold of their *Liberties*.

Thirdly, I muſt not detract from the Worth of all thoſe Learned Men, who are of a contrary Opinion in the Point of *Natural Liberty*: the profoundeſt Scholar that ever was known hath not been able to ſearch out every Truth that is diſcoverable; neither *Ariſtotle* in Philoſophy, nor *Hooker* in Divinity. They are but Men, yet I reverence their Judgements in moſt Points, and confeſs my ſelf beholding to their Errors too in this; ſomething that I found amiſs in their Opinions, guided me in the diſcovery of that Truth which (I per-

ſwade my ſelf) they miſſed. A Dwarf ſometimes may ſee that which a Giant looks over; for whileſt one Truth is curiouſly ſearched after, another muſt neceſſarily be neglected. Late Writers have taken up too much upon Truſt from the ſubtile School-men, who to be ſure to thruſt down the King below the Pope, thought it the ſafeſt courſe to advance the People above the King, that ſo the Papal Power might take place of the Regal. Thus many an Ignorant Subject hath been fooled into this Faith, that a man may become a *Martyr* for his *Countrey*, by being a *Traytor* to his *Prince*; whereas the Newcoyned diſtinction of Subjects into Royalliſts and Patriots, is moſt unnatural, ſince the relation between King and People is ſo great, that their well-being is ſo Reciprocal.

(2) To make evident the Grounds of this Queſtion, about the *Natural Liberty of Mankind*, I will lay down ſome paſſages of Cardinal *Bellarmine*, that may beſt unfold the State of this Controverſie. *Secular or Civil Power* (ſaith he) *is inſtituted by Men*; *It is in*

the

the People, unleſs they beſtow it on a Prince. This Power is immediately in the whole Multitude, as in the Subject of it; for this Power is in the Divine Law, but the Divine Law hath given this Power to no particular Man------- If the Poſitive Law be taken away, there is left no Reaſon, why amongſt a Multitude (who are Equal) one rather than another ſhould bear Rule over the reſt. ----- Power is given by the Multitude to one man, or to more, by the ſame Law of Nature; for the Commonwealth cannot exerciſe this Power, therefore it is bound to beſtow it upon ſome One Man, or ſome Few.------ It depends upon the Conſent of the Multitude to ordain over themſelves a King, or Conſul, or other Magiſtrates; and if there be a lawful Cauſe, the Multitude may change the Kingdom into an Ariſtocracy *or* Democracy. Thus far *Bellarmine*; in which paſſages are compriſed the ſtrength of all that ever I have read, or heard produced for the *Natural Liberty of the Subject.*

Before I examine or refute theſe Doctrines, I muſt a little make ſome Obſervations upon his Words.

Firſt,

First, He ſaith, that by the Law of God, *Power* is immediately in the People; hereby he makes God to be the immediate Author of a *Democratical Eſtate*; for a *Democracy* is nothing elſe but the Power of the Multitude. If this be true, not only *Ariſtocracies*, but all *Monarchies* are altogether unlawful, as being ordained (as he thinks) by Men, whenas God himſelf hath choſen a *Democracy*.

Secondly, He holds, that although a *Democracy* be the Ordinance of God, yet the people have no power to uſe the Power which God hath given them, but only power to give away their Power; whereby it followeth, that there can be no *Democratical Government*, becauſe he ſaith, the people muſt give their Power to One Man, or to ſome Few; which maketh either a *Regal* or *Ariſtocratical Eſtate*; which the Multitude is tyed to do, even by the ſame Law of *Nature* which Originally gave them the *Power*: And why then doth he ſay, the *Multitude* may change the *Kingdom* into a *Democracy*?

Thirdly,

Thirdly, He concludes, that if there be a lawful Cauſe, the *Multitude* may change the *Kingdom*. Here I would fain know who ſhall judge of this lawful Cauſe? If the *Multitude* (for I ſee no Body elſe can) then this is a peſtilent and dangerous Concluſion.

(3) I come now to examine that Argument which is uſed by *Bellarmine*, and is the One and only *Argument* I can find produced by my Author for the proof of the *Natural Liberty of the People*. It is thus framed: *That God hath given or ordained Power, is evident by Scripture; But God hath given it to no particular Perſon, becauſe by Nature all Men are Equal; therefore he hath given Power to the People, or Multitude.*

To Anſwer this Reaſon, drawn from the Equality of Mankind by Nature, I will firſt uſe the help of *Bellarmine* himſelf, whoſe very words are theſe: *If many men had been together created out of the Earth, they all ought to have been Princes over their Poſterity.* In theſe words we have an Evident Confeſſion, that Creation made man Prince of his Poſterity.

rity. And indeed not only *Adam*, but the ſucceeding *Patriarchs* had, by Right of Father-hood, Royal Authority over their Children. Nor dares *Bellarmine* deny this alſo. That the *Patriarchs* (ſaith he) were endowed with Kingly Power, their Deeds do teſtifie; for as *Adam* was Lord of his Children, ſo his Children under him, had a Command and Power over their own Children; but ſtill with ſubordination to the Firſt Parent, who is Lord-Paramout over his Childrens Children to all Generations, as being the *Grand-Father* of his People.

(4) I ſee not then how the Children of *Adam*, or of any man elſe can be free from ſubjection to their *Parents*: And this ſubjection of Children being the Fountain of all *Regal Authority*, by the Ordination of God himſelf; It follows, that Civil Power not only in general is by Divine Inſtitution, but even the Aſſignment of it ſpecifically to the Eldeſt Parents, which quite takes away that New and Common diſtinction, which refers only Power Univerſal and Abſolute to God; but Power Reſpective, in regard of the Special Form of Government, to the Choice of the people. This

This Lordſhip which *Adam* by Command had over the whole World, and by Right deſcending from him the *Patriarchs* did enjoy, was as large and ample as the Abſoluteſt Dominion of any *Monarch* which hath been ſince the Creation: For Dominion of Life and Death, we find that *Judah* the Father pronounced Sentence of Death againſt *Thamar* his Daughter-in-law, for playing the Harlot; *Bring her forth* (ſaith he) *that ſhe may be burnt.* Touching War, we ſee that *Abram* commanded an Army of 318 Souldiers of his own Family. And *Eſau* met his Brother *Jacob* with 400 Men at Arms. For matter of Peace, *Abraham* made a League with *Abimelech*, and ratified the *Articles* with an Oath. Theſe Acts of Judging in *Capital Crimes*, of making *War*, and concluding *Peace*, are the chiefeſt Marks of *Sovereignty* that are found in any *Monarch.*

(5) Not only until the *Flood*, but after it, this *Patriarchal Power* did continue, as the very name *Patriarch* doth in part prove. The three Sons of *Noah* had the whole World divided amongſt them

them by their Father; for of them was the whole World over-ſpread, according to the Benediction given to him and his Sons, *Be fruitful and multiply, and repleniſh the Earth.* Moſt of the Civileſt Nations of the Earth labour to fetch their Original from ſome One of the Sons or Nephews of *Noah*, which were ſcattered abroad after the Confuſion of *Babel*: In this Diſperſion we muſt certainly find the Eſtabliſhment of *Regal Power* throughout the Kingdoms of the World.

It is a common Opinion, that at the Confuſion of Tongues there were 72 diſtinct Nations erected, all which were not Confuſed Multitudes, without Heads or Governours, and at Liberty to chooſe what Governours or Government they pleaſed; but they were diſtinct Families, which had Fathers for Rulers over them; whereby it appears that even in the Confuſion God was careful to preſerve the Fatherly Authority, by diſtributing the diverſity of Languages according to the diverſity of Families; for ſo plainly it appears by the Text: Firſt, after the Enumeration of the Sons

of

of *Japhet*, the Concluſion is, *By theſe were the Iſles of the Gentiles divided in their Lands, every one after his Tongue, after their Families, in their Nations*; ſo it is ſaid: *Theſe are the Sons of* Ham *after their Families, after their Tongues, in their Countreys, and in their Nations.* The like we read, *Theſe are the Sons of* Shem *after their Families, after their Tongues, in their Lands, after their Nations. Theſe are the Families of the Sons of* Noah *after their Generations in their Nations; and by theſe were theſe Nations divided in the Earth, after the Flood.*

In this Diviſion of the World, ſome are of Opinion that *Noah* uſed Lots for the diſtribution of it; others affirm he ſayled about the *Mediterranean Sea* in Ten years, and as he went about, appointed to each Son his part, and ſo made the Diviſion of the then known World into *Aſia*, *Africa*, and *Europe*, (according to the Number of his Sons) the Limits of which Three Parts are all found in that Midland Sea.

(6) But howſoever the manner of this Diviſion be uncertain, yet it is moſt certain

certain the Diviſion it ſelf was by Families from *Noah* and his Children, over which the Parents were Heads and Princes.

Amongſt theſe was *Nimrod*, who no doubt (as Sir *Walter Raleigh* affirms) was, by good Right, Lord or King over his Family; yet againſt Right did he enlarge his Empire, by ſeizing violently on the Rights of other Lords of Families: And in this ſenſe he may be ſaid to be the Author and firſt Founder of *Monarchy*. And all thoſe that do attribute unto him the Original Regal Power, do hold he got it by Tyranny or Uſurpation, and not by any due Election of the People or Multitude, or by any Faction with them.

As this *Patriarchal Power* continued in *Abraham*, *Iſaac*, and *Jacob*, even until the *Egyptian Bondage*; ſo we find it amongſt the Sons of *Iſmael* and *Eſau*. It is ſaid, *Theſe are the Sons of* Iſmael, *and theſe are their Names by their Caſtles and Towns, Twelve Princes of their Tribes and Families. And theſe are the Names of the Dukes that came of* Eſau, *according to their*

their families & their places by their nations.

(7) Some perhaps may think that theſe Princes and Dukes of Families were but ſome petty Lords under ſome greater Kings, becauſe the number of them are ſo many, that their particular Territories could be but ſmall, and not worthy the Title of Kingdoms; but they muſt conſider, that at firſt, Kings had no ſuch large Dominions as they have now adays; we find in the time of *Abraham*, which was about 300 years after the Flood, that in a little corner of *Aſia*, 9 Kings at once met in Batail, moſt of which were but Kings of Cities apiece, with the adjacent Territories, as of *Sodom*, *Gomorrah*, *Shinar*, &c. In the ſame Chapter is mention of *Melchiſedeck* King of *Salem*, which was but the City of *Jeruſalem*. And in the Catalogue of the Kings of *Edom*, the Names of each King's City is recorded, as the only Mark to diſtinguiſh their Dominions. In the Land of *Canaan*, which was but a ſmall circuit, *Joſhuah* deſtroyed Thirty one Kings; and about the ſame time, *Adonibeſeck* had 70 Kings, whoſe Hands and Toes he had cut off, and made them feed under his Table. A few years after this, 32 Kings came to *Benhadad* King of *Syria*, and about

1 *Kings* 20. 16.

venty Kings of *Greece* went to the Wars of *Troy*. *Cæsar* found more Kings in *France*, than there be now Princes there, and at his Sailing over into this Island, he found four Kings in our County of *Kent*. These heaps of Kings in each Nation, are an Argument their Territories were but small, and strongly confirms our Assertion, that Erection of Kingdoms came at first only by Distinction of Families.

By manifest Footsteps we may trace this Paternal Government unto the *Israelites* coming into *Ægypt*, where the Exercise of Supreme Patriarchal Jurisdiction was intermitted, because they were in subjection to a stronger Prince. After the Return of these *Israelites* out of Bondage, God out of a special Care of them, chose *Moses* and *Josuah* successively to govern as Princes in the Place and Stead of the Supreme Fathers: and after them likewise for a time, he raised up *Judges*, to defend his People in time of Peril. But when God gave the *Israelites* Kings, he reestablished the Antient and Prime Right of Lineal Succession to Paternal Government. And when-

whenſoever he made choice of any ſpecial Perſon to be King, he intended that the Iſſue alſo ſhould have benefit thereof, as being comprehended ſufficiently in the Perſon of the Father, although the Father only was named in the Graunt.

(8.) It may ſeem abſurd to maintain that Kings now are the Fathers of their People, ſince Experience ſhews the contrary. It is true, all Kings be not the Natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to thoſe firſt Progenitors, who were at firſt the Natural Parents of the whole People, and in their Right ſucceed to the Exerciſe of *Supreme Juriſdiction*; and ſuch Heirs are not only Lords of their own Children, but alſo of their Brethren, and all others that were ſubject to their Fathers: And therefore we find, that God told *Cain* of his Brother *Abel*, *His Deſires ſhall be ſubject unto thee, and thou ſhalt rule over him.* Accordingly, when *Jacob* bought his Brother's Birth-right, *Iſaac* bleſſed him thus, *Be Lord over thy Brethren, and let the Sons of thy Mother bow before thee.* Gen. 27. 29.

As long as the firſt Fathers of Families lived, the name of *Patriarchs* did aptly belong unto them; but after a few Deſcents, when the true Fatherhood it ſelf was extinct, and only the Right of the Father deſcends to the true Heir, then the Title of *Prince* or *King* was more *Significant*, to expreſs the Power of him who ſucceeds only to the Right of that Fatherhood which his Anceſtors did *Naturally* enjoy; by this means it comes to paſs, that many a Child, by ſucceeding a King, hath the Right of a Father over many a Gray-headed Multitude, and hath the Title of *Pater Patriæ.*

(9.) It may be demanded what becomes of the Right of *Fatherhood*, in Caſe the Crown does eſcheate for want of an Heir? Whether doth it not then Devolve to the People? The Anſwer is, It is but the Negligence or Ignorance of the People to loſe the Knowledge of the true Heir: for an Heir there always is. If *Adam* himſelf were ſtill living, and now ready to die, it is certain that there is One Man, and but One in the World who is next Heir, al-

although the Knowledge who ſhould be that one One Man be quite loſt.

2. This Ignorance of the People being admitted, it doth not by any means follow; that for want of Heirs the Supreme Power is devolved to the Multitude, and that they have Power to Rule, and Choſe what Rulers they pleaſe. No, the Kingly Power eſcheats in ſuch caſes to the Princes and independent Heads of Families: for every Kingdom is reſolved into thoſe parts whereof at firſt it was made. By the Uniting of great Families or petty Kingdoms, we find the greater *Monarchies* were at the firſt erected; and into ſuch again, as into their firſt Matter many times they return again. And becauſe the dependencie of ancient Families is oft obſcure or worn out of Knowledge; therefore the wiſdom of All or Moſt Princes have thought fit to adopt many times thoſe for Heads of Families, and Princes of Provinces, whoſe Merits, Abilities, or Fortunes, have ænobled them, or made them fit and capable of ſuch Regal Favours. All ſuch prime Heads and Fathers have power to conſent in the

uniting or conferring of their Fatherly Right of Sovereign Authority on whom they pleaſe: And he that is ſo Elected, claims not his Power as a *Donative* from the People; but as being ſubſtituted properly by God, from whom he receives his *Royal Charter* of an *Univerſal* Father, though teſtified by the Miniſtry of the Heads of the People.

If it pleaſe God, for the Correction of the Prince, or puniſhment of the People, to ſuffer Princes to be removed, and others to be placed in their rooms, either by the Factions of the Nobility, or Rebellion of the People; in all ſuch caſes, the Judgment of God, who hath power to give and to take away Kingdoms, is moſt juſt: yet the Miniſtry of men who execute God's Judgments without Commiſſion, is ſinful and damnable. God doth but uſe and turn mens *Unrighteous Acts* to the performance of his *Righteous Decrees*.

(10.) In all Kingdoms or Commonwealths in the World, whether the Prince be the Supreme Father of the People, or but the true Heir of ſuch a Father,

Father, or whether he come to the Crown by Uſurpation, or by Election of the Nobles, or of the People, or by any other way whatſoever; or whether ſome Few or a Multitude govern the Commonwealth: yet ſtill the Authority that is in any One, or in Many, or in All theſe, is the only Right and Natural Authority of a Supreme Father. There is and always ſhall be continued to the End of the World, a Natural Right of a Supreme Father over every Multitude, although by the ſecret Will of God, many at firſt do moſt unjuſtly obtain the Exerciſe of it.

To confirm this Natural Right of *Regal* Power, we find in the *Decalogue*, That the Law which enjoyns Obedience to Kings, is delivered in the terms of *Honour thy Father*, as if all power were originally in the Father. If Obedience to Parents be immediately due by a *Natural Law*, and Subjection to Princes, but by the Mediation of an *Humane Ordinance*; what reaſon is there that the Laws of *Nature* ſhould give place to the Laws of Men? as we ſee the power of the Father over his Child,

gives place, and is ſubordinate to the power of the Magiſtrate.

If we compare the Natural Rights of a Father with thoſe of a King, we find them all one, without any difference at all, but only in the Latitude or Extent of them: as the Father over one Family, ſo the King as Father over many Families extends his care to preſerve, feed, cloth, inſtruct and defend the whole Commonwealth. His War, his Peace, his Courts of Juſtice, and all his Acts of Sovereignty tend only to preſerve and diſtribute to every ſubordinate and inferiour Father, and to their Children, their Rights and Privileges; ſo that all the Duties of a King are ſummed up in an Univerſal Fatherly Care of his People.

CHAP.

CHAP. II.

It is unnatural for the People to Govern, or Choſe Governours.

(1.) ARiſtotle *examined about the Freedom of the People, and juſtified.* (2.) Suarez *diſputing againſt the* Regality *of* Adam. (3.) *Families diverſly defined by* Ariſtotle, Bodin *and others.* (4.) Suarez *contradicting* Bellarmine. (5.) *Of Election of Kings.* (6.) *By the Major part of the People.* (7.) *By Proxy, and by ſilent Acceptation.* (8.) *No Example in Scripture of the Peoples choſing their King.* Mr. Hooker's *Judgment therein.* (9.) *God governed always by Monarchy.* (10.) Bellarmine *and* Ariſtotle's *Judgment of Monarchy.* (11.) *Imperfections of the* Roman Democratie. (12.) Rome *began*

began her Empire under Kings, and perfected under Emperours. *In danger, the People of* Rome *always fled to Monarchy.* (13.) *Whether* Democraties *were invented to bridle Tyrants, or rather that they came in by Stealth.* (14.) Democraties *vilified by their own Hiſtorians.* (15.) *Popular Government more bloody than Tyranny.* (16.) *Of a mixed Government of the King and People.* (17.) *The People may not judge or correct their King.* (18.) *No Tyrants in* England *ſince the Conqueſt.*

(1.) BY conferring theſe Proofs and Reaſons drawn from the Authority of the Scripture, it appears little leſs than a Paradox which *Bellarmine* and others affirm of the Freedom of the *Multitude*, to choſe what Rulers they pleaſe.

Had the *Patriarchs* their Power given them by their own Children? *Bellarmine* does not ſay it, but the Contrary: If then the Fatherhood enjoyed this Authority for ſo many Ages by the Law of Nature, when was it loſt, or

or when forfeited, or how is it devolved to the Liberty of the *Multitude*?

Becauſe the Scripture is not favourable to the Liberty of the People; therefore many fly to Natural Reaſon, and to the Authority of *Ariſtotle*. I muſt crave Liberty to examine or explain the Opinion of this great Philoſopher; but briefly, I find this Sentence in the Third of his Politiques. *Cap.* 16. δοκεῖ δέ τισιν ἐκ φύσιν εἶ) τὸ κύριον ἕνα πάντων εἶ) τῶν πολιτῶν, ὅπερ συνέσηκεν ἐξ ὁμοίων ἡ πόλις. It ſeems to ſome not to be natural for one man to be Lord of all the Citizens, ſince a City conſiſts of Equals. D. *Lambine* in his *Latine* Interpretation of this Text, hath omitted the Tranſlation of this word [τίσιν] by this means he maketh that to be the Opinion of *Ariſtotle*, which *Ariſtotle* alleadgeth to be the Opinion but of ſome. This Negligence, or Wilful Eſcape of *Lambine*, in not tranſlating a word ſo Material, hath been an occaſion to deceive many, who looking no farther than this *Latine* Tranſlation, have concluded, and made the World now of late believe, that *Ariſtotle* here maintains a *Natural*

Natural Equality of Men; and not only our *Engliſh* Tranſlator of *Ariſtotle's Politiques* is in this place miſled by following *Lambine*; but even the Learned *Monſieur Duvall* in his *Synopſis* bears them company: and yet this Verſion of *Lambine's* is eſteemed the beſt, and Printed at *Paris* with *Cauſabon's* corrected *Greek* Copy, though in the rendring of this place, the Elder Tranſlations have been more faithful; and he that ſhall compare the *Greek* Text with the *Latine*, ſhall find that *Cauſabon* had juſt cauſe in his Preface to *Ariſtotle's* Works, to complain that the beſt Tranſlations of *Ariſtotle* did need Correction: To prove that in theſe words which ſeem to favour the Equality of Mankind, *Ariſtotle* doth not ſpeak according to his own Judgment, but recites only the Opinion of others; we find him clearly deliver his own Opinion, that the Power of Government did originally ariſe from the Right of Fatherhood, which cannot poſſibly conſiſt with that *Natural Equality* which Men dream of: for in the Firſt of his *Politiques* he agrees exactly with the Scripture, and lays this Foundation of Government,

The

The first *Society* (saith he) made of Many Houses is a Village, which seems most naturally to be a Colony of Families or foster-Brethren of Children and Childrens Children. And therefore at the beginning, Cities were under the Government of Kings, for the eldest in every house is King: And so for Kindred-sake it is in Colonies. And in the fourth of his Politiques, *cap.* 2, He gives the Title of the first and Divinest sort of Government to the Institution of Kings, by Defining *Tyranny* to be a Digression from the First and *Divinest.*

Whosoever weighs advisedly these passages, will find little hope of *Natural Reason* in *Aristotle* to prove the *Natural Liberty* of the *Multitude.* Also before him the Divine *Plato* concludes a Commonweal to be nothing else but a large Family. I know for this Position *Aristotle* quarrels with his *Master*, but most unjustly; for therein he contradicts his own Principles: for they both agree to fetch the Original of Civil Government from the prime Government. No doubt but *Moses*'s History of the Creation guided these two Philosophers in finding

finding out of this *Lineal Subjection*, deduced from the *Laws* of the *First Parents*, according to that Rule of St. *Chryſoſtom*, *God made all Mankind of One Man, that he might teach the World to be Governed by a King, and not by a Multitude.*

The Ignorance of the Creation, occaſioned ſeveral Errors amongſt the *Heathen* Philoſophers. *Polybius*, though otherwiſe a moſt profound Philoſopher, and Judicious Hiſtorian, yet here he ſtumbles; for in ſearching out the Original of Civil Societies, he conceited, *That Multitudes of Men after a Deluge, a Famine, or a Peſtilence, met together like Herds of Cattel without any Dependency, untill the ſtrongeſt Bodies and boldeſt Minds got the Maſtery of their Fellows*; even as it is (ſaith he) among *Bulls, Bears and Cocks.*

And *Ariſtotle* himſelf, forgetting his firſt Doctrine, tells us, the firſt *Heroical Kings* were choſen by the People for their deſerving well of the Multitude; either by teaching them ſome New Arts, or by Warring for them, or by Gathering

ing them together, or by Dividing Land amongſt them; alſo *Ariſtotle* had another Fancy, that thoſe Men who prove wiſe of Mind, were by Nature intended to be Lords, and Govern, and thoſe which were Strong of Body were ordained to obey, and to be Servants. But this is a dangerous and uncertain Rule, and not without ſome Folly; for if a man prove both *Wiſe* and *Strong*, what will *Ariſtotle* have done with him? as he was *Wiſe*, he could be no Servant, and as he had *Strength*, he could not be a Maſter; beſides, to ſpeak like a Philoſopher, *Nature* intends all things to be perfect both in Wit and Strength. The Folly or Imbecillity proceeds from ſome Errour in Generation or Education; for Nature aims at *Perfection* in all her Works.

(2) *Suarez* the Jeſuite riſeth up againſt the Royal Authority of *Adam*, in defence of the Freedom and Liberty of the people; and thus argues. By Right of Creation (ſaith he) *Adam* had only *Oeconomical* power, but not *Political*; he had a power over his Wife, and a Fatherly power over his Sons, whilſt

whilſt they were not made Free: he might alſo in proceſs of Time have Servants and a Compleat Family; and in that Family he might have compleat *Oeconomical Power*. But after that Families began to be multiplied, and Men to be ſeparated, and become the Heads of ſeveral Families; they had the ſame power over their Families. But *Political Power* did not begin, until Families began to be gathered together into one perfect Community; wherefore as the Community did not begin by the Creation of *Adam*, nor by his Will alone, but of all them which did agree in this Community: So we cannot ſay that *Adam Naturally* had Political Primacy in that Community; for that cannot be gathered by any Natural Principles, becauſe by the Force of the Law of Nature alone, it is not due unto any Progenitor, to be alſo King of his Poſterity. And if this be not gathered out of the Principles of Nature, we cannot ſay, God by a ſpecial Gift or Providence gave him this Power; For there is no Revelation of this, nor Teſtimony of Scripture. Hitherto *Suarez*.

Whereas

Whereas he makes *Adam* to have a Fatherly power over his Sons, and yet ſhuts up this power within One Family, he ſeems either to imagine, that all *Adam*'s Children lived within one Houſe, and under one Roof with their Father; or elſe, as ſoon as any of his Children lived out of his Houſe, they ceaſed to be Subject, and did thereby become Free. For my part, I cannot believe that *Adam* (although he were ſole Monarch of the World) had any ſuch ſpacious Palace, as might contain any ſuch Conſiderable part of his Children. It is likelier, that ſome mean Cottage or Tent did ſerve him to keep his Court in. It were hard he ſhould loſe part of his Authority, becauſe his Children lay not within the Walls of his Houſe. But if *Suarez* will allow all *Adam*'s Children to be of his Family, howſoever they were ſeparate in Dwellings; if their Habitations were either Contiguous, or at ſuch Diſtance, as might eaſily receive his Fatherly Commands. And that all that were under his Commands, were of his Family, although they had many Children or Servants married, having themſelves alſo Children. Then I ſee

no reaſon, but that we may call *Adam's* Family a Commonwealth, except we will wrangle about Words: For *Adam* living 930 years, and ſeeing 7 or 8 Deſcents from himſelf, he might live to command of his Children and their Poſterity a Multitude far bigger, than many Commonwealths and Kingdoms.

(3.) I know the *Politicians* and *Civil Lawyers* do not agree well about the Definition of a Family, and *Bodin* doth ſeem in one place to confine it to a Houſe; yet in his Definition, he doth enlarge his meaning to all *Perſons* under the *Obedience* of One and the Same Head of the Family; and he approves better of the propriety of the *Hebrew* Word for a Family, which is derived from a Word that ſignifies a Head, a Prince, or Lord, than the *Greek* Word for a Family, which is derived from οἶκος, which ſignifies a Houſe. Nor doth *Ariſtotle* confine a Family to One Houſe; but eſteems it to be made of thoſe that daily converſe together: whereas before him, *Charondas* called a Family *Homoſſpioi*, thoſe that feed together out of one common *Pannier*. And *Epimeni-*

Epimenides the *Cretian*, terms a Family *Homocapnoi*, thoſe that ſit by a Common Fire, or Smoak. But let *Suarez* underſtand what he pleaſe by *Adam*'s Family; if he will but confeſs, as he needs muſt, that *Adam* and the *Patriarchs* had Abſolute power of Life and Death, of Peace and War, and the like, within their Houſes or Families; he muſt give us leave at leaſt, to call them Kings of their Houſes or Families; and if they be ſo by the Law of Nature, what Liberty will be left to their Children to diſpoſe of?

Ariſtotle gives the Lie to *Plato*, and thoſe that ſay *Political* and *Oeconomical* Societies are all one, and do not differ *Specie*, but only *Multitudine & Paucitate*; as if there were no difference betwixt a Great Houſe and a Little City. All the Argument I find he brings againſt them in this.

The Community of Man and Wife, differs from the Community of Maſter and Servant, becauſe they have ſeveral Ends. The Intention of Nature by Conjunction of Male and Female, is Generation; but the Scope of Maſter and Servant, is Preſervation: ſo that a *Ariſt. Pol. Lib.* 1. *c.* 2.

Wife and a Servant are by Nature distinguished, because Nature does not work like the *Cutlers of Delphos*, for she makes but one thing for one Use. If we allow this Argument to be sound, nothing doth follow but only this, That Conjugal and Despotical communities do differ. But it is no consequence, That therefore, *Oeconomical* and *Political* Societies do the like: For though it prove a Family to consist of two distinct Communities, yet it follows not, that a Family and a Commonwealth are distinct; because, as well in the Commonweal, as in the Families, both these Communities are found.

And as this Argument comes not home to our Point, so it is not able to prove that Title which it shews for; for if it should be granted (which yet is false) that *Generation* and *Preservation* differ about the *Individuum*, yet they agree in the General, and serve both for the Conservation of Mankind; Even as several Servants differ in the particular Ends or Offices; as one to Brew, and another to Bake; yet they agree in the general Preservation of the Family.

Family. Beſides, *Ariſtotle* confeſſes, that amongſt the *Barbarians* (as he calls all them that are not *Grecians*) a Wife and a Servant are the ſame, becauſe by Nature, no *Barbarian* is fit to Govern; It is fit the *Grecians* ſhould rule over the *Barbarians*; for by Nature a Servant and a *Barbarian* is all one: their Family conſiſts only of an Ox for a Man-Servant, and a Wife for a Maid; ſo they are fit only to rule their Wives and their Beaſts. Laſtly, *Ariſtotle* (if it had pleaſed him) might have remembred, That Nature doth not always make one Thing but for one Uſe: he knows, the Tongue ſerves both to Speak, and to Taſte.

(4.) But to leave *Ariſtotle*, and return to *Suarez*; he ſaith that *Adam* had Fatherly Power over his Sons, whilſt they were not made Free. Here I could wiſh that the Jeſuite had taught us, how and when Sons become Free: I know no means by the Law of Nature. It is the Favour I think of the Parents only, who when their Children are of Age and Diſcretion to eaſe their Parents of part of their Fatherly Care,

are then content to remit ſome part of their Fatherly authority; therefore the Cuſtom of ſome Countreys doth in ſome Caſes Enfranchiſe the Children of Inferiour Parents, but many Nations have no ſuch Cuſtome, but on the contrary have ſtrict Laws for the Obedience of Children: the Judicial Law of *Moſes* giveth full power to the Father to ſtone his diſobedient Son, ſo it be done in preſence of a Magiſtrate: And yet it did not belong to the Magiſtrate to enquire and examine the juſtneſs of the Cauſe; But it was ſo decreed, leſt the Father ſhould in his Anger, ſuddenly, or ſecretly kill his Son.

Alſo by the Laws of the *Perſians*, and of the People of the Upper *Aſia*, and of the *Gaules*, and by the Laws of the *Weſt-Indies*, the Parents have power of Life and Death over their Children.

The *Romans*, even in their moſt Popular Eſtate, had this Law in force, and this Power of Parents was ratified and amplified by the Laws of the Twelve Tables, to the enabling of Parents to ſell their Children two or three times over

over. By the help of the Fatherly Power, *Rome* long flouriſhed, and oftentimes was freed from great Dangers. The Fathers have drawn out of the very *Aſſemblies* their own Sons; when being *Tribunes*, they have publiſhed Laws tending to Sedition.

Memorable is the Example of *Caſſius*, who threw his Son headlong out of the Conſiſtory, publiſhing the Law *Agraria*, for the Diviſion of Lands, in the behoof of the people; and afterwards, by his own private Judgment put him to Death, by throwing him down from the *Tarpeian* Rock; the Magiſtrates and People ſtanding thereat amazed, and not daring to reſiſt his Fatherly Authority, although they would with all their Hearts, have had that Law for the Diviſion of Land: by which it appears, it was lawful for the Father to diſpoſe of the Life of his Child, contrary to the Will of the Magiſtrates or People. The *Romans* alſo had a Law, that what the Children got, was not their own, but their Fathers; although *Solon* made a Law, which acquitted the Son from Nouriſhing of his Father, if his Father had taught him

no Trade, whereby to get his Living.

Suarez proceeds, and tells us, That in Proceſs of Time, *Adam* had compleat *Oeconomical* Power. I know not what this compleat *Oeconomical* Power is, nor how, or what it doth really and eſſentially differ from Political: If *Adam* did, or might exerciſe the ſame Juriſdiction, which a King doth now in a Commonwealth, then the Kinds of Power are not diſtinct; and though they may receive an Accidental Difference by the Amplitude, or Extent of the Bounds of the One beyond the Other; yet ſince the like Difference is alſo found in *Political* Eſtates, It follows that *Oeconomical* and *Political* Power, differ no otherwiſe, than a Little Commonweal differs from a Great One. Next, ſaith *Suarez*, *Commnnity did not begin at the Creation of* Adam. It is true, becauſe he had no body to Communicate with; yet Community did preſently follow his Creation, and that by his Will alone: for it was in his power only, (who was Lord of All) to appoint what his Sons ſhould have in *Proper*, and what in *Common*; ſo that *Propriety* and *Community* of Goods did follow Originally from Him;

and it is the Duty of a Father, to provide as well for the Common Good of his Children, as the Particular.

Laſtly, *Suarez* Concludes, That by the Law of Nature alone, it is not due unto any Progenitor, to be alſo *King* of his *Poſterity*. This Aſſertion is confuted point-blank by *Bellarmine*, who expreſly affirmeth, That the Firſt Parents ought to have been Princes of their poſterity. And untill *Suarez* bring ſome Reaſon for what he ſaith: I ſhall truſt more to *Bellarmine*'s Proofs, than to his Denials.

(5.) But let us Condeſcend a while to the Opinion of *Bellarmine* and *Suarez*, and all thoſe, who place Supreme power in the Whole People; and ask them if their meaning be, That there is but one and the ſame power in All the people of the World; ſo that no power can be granted, except All the Men upon the Earth meet and agree, to chooſe a Governour.

An Anſwer is here given by *Suarez*, That it is ſcarce poſſible, nor yet expedient,

dient, that All Men in the World ſhould be gathered together into One Community: It is likelier, that either never, or for a very ſhort time, that this power was in this manner, in the whole Multitude of Men collected; but a little after the Creation, men began to be divided into ſeveral Commonwealths; and this diſtinct power was in Each of them.

This Anſwer of *Scarce poſſible*, nor yet *Expedient:* ---- It is likelier begets a new doubt, how this Diſtinct power comes to each particular Community, when God gave it to the whole Multitude only, and not to any particular Aſſembly of Men. Can they ſhew, or prove, that ever the whole Multitude met, and divided this power which God gave them in Groſs, by breaking into parcels, and by appointing a diſtinct power to each ſeveral Commonwealth? Without ſuch a Compact I cannot ſee (according to their own Principles) how there can be any Election of a Magiſtrate by any Commonwealth, but by a meer Uſurpation upon the privilege of the whole World. If any think

that

that particular Multitudes at their own Diſcretion, had power to divide themſelves into ſeveral Commonwealths; thoſe that think ſo, have neither Reaſon nor Proof for ſo thinking: and thereby a Gap is opened for every petty Factious Multitude, to raiſe a New-Commonwealth, and to make more Commonweals than there be Families in the World. But let this alſo be yielded them, That in each particular Commonwealth, there is a Diſtinct Power in the Multitude. Was a General Meeting of a Whole Kingdom ever known for the Election of a Prince? Is there any Example of it ever found in the Whole World? To conceit ſuch a thing, is to imagine little leſs than an Impoſſibility. And ſo by Conſequence, no one Form of Government, or King, was ever eſtabliſhed according to this ſuppoſed Law of Nature.

(6.) It may be anſwered by ſome, That if either the Greateſt part of a Kingdom, or if a ſmaller part only by Themſelves, and all the Reſt by *Proxy*, or if the part not concurring in Election, do after, by a *Tacit* Aſſent ratifie

tifie the Act of Others, That in all theſe Caſes, it may be ſaid to be the Work of the whole Multitude.

As to the Acts of the Major part of a Multitude, it is true, that by Politick Humane Conſtitutions, it is oft ordained, that the Voices of the moſt ſhall over-rule the Reſt; and ſuch Ordinances bind, becauſe, where Men are Aſſembled by an Humane Power; that power that doth Aſſemble them, can alſo Limit and Direct the manner of the Execution of that Power, and by ſuch *Derivative* Power, made known by Law or Cuſtom, either the greater part, or two Thirds, or Three parts of Five, or the like, have power to overſway the Liberty of their Oppoſits. But in Aſſemblies that take their Authority from the Law of Nature, it cannot be ſo: for what Freedom or Liberty is due to any Man by the Law of Nature, no Inferiour Power can alter, limit or diminiſh; no One Man, nor a Multitude, can give away the Natural Right of another. The Law of Nature is unchangeable, and howſoever One Man may hinder Another in the Uſe or Exerciſe of his

his Natural Right, yet thereby No Man loſeth the Right of it ſelf; for the Right and the Uſe of the Right may be diſtinguiſhed, as Right and Poſſeſſion are oft diſtinct. Therefore, unleſs it can be proved by the Law of Nature, that the *Major*, or ſome other part, have Power to over-rule the Reſt of the Multitude; It muſt follow, that the Acts of *Multitudes* not Entire, are not Binding to All, but only to ſuch as Conſent unto them.

(7.) As to the point of *Proxy*; it cannot be ſhewed or proved, That all thoſe that have been Abſent from Popular Elections, did ever give their Voices to ſome of their Fellows. I ask but one Example out of the Hiſtory of the whole World, let the Commonweal be but named, wherever the Multitude, or ſo much as the Greateſt part of it conſented, either by Voice or by Procuration, to the Election of a Prince. The Ambition ſometimes of One Man, ſometimes of Many, or the Faction of a City or Citizens, or the Mutiny of an Army, hath ſet up or put down Princes; but they have never tarried for this pretended Order by proceeding of the whole *Multitude*. Laſt-

Laſtly, if the ſilent Acceptation of a Governour by part of the People, be an Argument of their Concurring in the Election of him; by the ſame Reaſon, the Tacit Aſſent of the whole Commonwealth may be maintained: From whence it follows, that every Prince that comes to a Crown, either by *Succeſſion*, *Conqueſt*, or *Uſurpation*, may be ſaid to be Elected by the People; which Inference is too ridiculous; for in ſuch Caſes, the People are ſo far from the Liberty of *Specification*, that they want even that of *Contradiction*.

(8.) But it is in vain to argue againſt the Liberty of the People in the Election of Kings, as long as men are perſwaded, that Examples of it are to be found in Scripture. It is fit therefore, to diſcover the Grounds of this Errour: It is plain by an Evident Text, that it is one thing to chooſe a King, and another thing to ſet up a King over the People; this latter power the Children of *Iſrael* had, but not the former. This Diſtinction is found moſt evident in *Dent.* 17. 15. where the Law of God

ſaith, *Him ſhalt thou ſet King over thee, whom the Lord ſhall chooſe*; ſo God muſt *Eligere*, and the People only do *Conſtituere*. Mr. *Hooker* in his Eighth Book of *Eccleſiaſtical Policy*, clearly expounds this Diſtinction; the words are worthy the citing: *Heaps of Scripture* (ſaith he) *are alledged, concerning the Solemn Coronation or Inauguration of* Saul, David, Solomon *and others, by Nobles, Ancients, and the people of the Commonwealth of* Iſrael; as if theſe Solemnities were a kind of Deed, whereby the Right of Dominion is given; which ſtrange, untrue, and unnatural conceits, are ſet abroad by Seed-men of Rebellion, only to animate unquiet Spirits, and to feed them with poſſibilities of Aſpiring unto the Thrones, if they can win the Hearts of the People; whatſoever Hereditary Title any other before them may have. I ſay theſe unjuſt and inſolent Poſitions, I would not mention, were it not thereby to make the Countenance of Truth more Orient. For unleſs we will openly proclaim Defiance unto all Law, Equity and Reaſon, we muſt (for there is no other Remedy) acknowledg, that in Kingdoms Hereditary, Birth-right giveth

giveth Right unto Sovereign Dominion, and the Death of the Predeceſſor, putteth the Succeſſor by Blood in Seiſin. Thoſe publick Solemnities beforementioned, do either ſerve for an open Teſtification of the Inheritor's Right, or belong to the Form of inducing of him into poſſeſſion of that thing he hath Right unto. This is Mr. *Hooker*'s Judgment of the *Iſraelites* Power to ſet a King over themſelves. No doubt, but if the people of *Iſrael* had had power to chooſe their King, they would never have made Choice of *Joas*, a Child but of Seven years old, nor of *Manaſſes* a Boy of Twelve; ſince (as *Solomon* ſaith) *Wo to the Land whoſe King is a Child*: Nor is it probable they would have elected *Joſias*, but a very Child, and a Son to ſo Wicked and Idolatrous a Father, as that his own Servants murthered him; and yet all the people ſet up this young *Joſias*, and ſlew the Conſpirators of the Death of *Ammon* his Father; which Juſtice of the People, God rewarded, by making this *Joſias* the moſt Religious King, that ever that Nation enjoyed.

(9.) Be-

(9.) Becauſe it is affirmed, that the People have power to chooſe, as well what Form of Government, as what Governours they pleaſe; of which mind is *Bellarmine*, in thoſe places we cited at firſt. Therefore it is neceſſary to Examine the Strength of what is ſaid in Defence of popular Commonweals, againſt this Natural Form of Kingdoms, which I maintain'd. Here I muſt firſt put the Cardinal in mind of what he affirms in Cold Blood, in other places; where he ſaith, *God when he made all Mankind of One Man, did ſeem openly to ſignifie, that he rather approved the Government of One Man, than of Many.* Again, God ſhewed his Opinion, when he endued not only Men, but all Creatures with a Natural Propenſity to *Monarchy*; neither can it be doubted, but a Natural Propenſity is to be referred to God, who is Author of Nature. And again; in a Third place, What Form of Government God confirmed by his Authority, may be gathered by that Commonweal, which he inſtituted amongſt the

Hebrews, which was not *Ariſtocratical*, (as *Calvin* ſaith) but plainly *Monarchichal.*

(10.) Now if God, (as *Bellarmine* ſaith) hath taught us by Natural Inſtinct, ſignified to us by the Creation, and confirmed by his own Example the Excellency of Monarchy, why ſhould *Bellarmine* or We doubt, but that it is Natural? Do we not find, that in every Family, the Government of One Alone, is moſt Natural? God did always Govern his own People by Monarchy only. The *Patriarchs*, *Dukes*, *Judges* and *Kings* were all Monarchs. There is not in all the Scripture, Mention or Approbation of any other Form of Government. At the time when Scripture ſaith, *There was No King in* Iſrael, *but that every Man did that which was Right in his Own Eyes*; Even then, the *Iſraelites* were under the Kingly Government of the Fathers of particular Families: For in the *Conſultation*, after the *Benjamitical* War, for providing Wives for the *Benjamites*, we find, the Elders of the Congregation bare only Sway.

Judges

Judges 21. 16. To them alſo were Complaints to be made, as appears by Verſe 22. And though mention be made of All the Children of *Iſrael*, All the *Congregation*, and All the *People*; yet by the Term of *All*, the Scripture means only All the Fathers, and not All the Whole Multitude, as the Text plainly expounds it ſelf in 2. *Chron.* 1. 2. where *Solomon* ſpeaks unto all *Iſrael*, to the *Captains*, the *Judges*, and to Every Governour the Chief of the Fathers; ſo the Elders of *Iſrael* are expounded to be the Chief of the Fathers of the Children of *Iſrael*. 1 *Kings* 8. 12. 2 *Chron.* 5. 2.

At that time alſo, when the People of *Iſrael* beg'd a King of *Samuel*, they were Governed by Kingly Power. God out of a ſpecial Love and Care to the Houſe of *Iſrael*, did chooſe to be their King himſelf, and did govern them at that time by his *Viceroy Samuel*, and his Sons; and therefore God tells *Samuel*, *They have not rejected Thee but Me, that I ſhould not Reign over them.* It ſeems they did not like a King by Deputati

on, but desired one by Succession, like all the Nations. All Nations belike had Kings then, and those by Inheritance, not by Election: for we do not find the *Israelites* prayed, that they themselves might choose their Own King; they dream of no such Liberty, and yet they were the Elders of *Israel* gathered together. If other Nations had Elected their own Kings, no doubt but they would have been as desirous to have imitated Other Nations as well in the *Electing*, as in the Having of a King.

Aristotle in his Book of *Politicks*, when he comes to compare the several Kinds of Government, he is very reserved in discoursing what Form he thinks Best: he disputes subtilely to and fro of many Points, and Judiciously of many Errours, but concludes nothing himself. In all those Books, I find little Commendation of Monarchy. It was his Hap to live in those Times when the *Grecians* abounded with several Commonwealths, who had then Learning enough to make them

them ſeditious. Yet in his *Ethicks*, he hath ſo much good Manners, as to confeſs in right down words, *That Monarchy is the Beſt Form of Government, and a Popular Eſtate the Worſt.* And though he be not ſo free in his *Politicks*, yet the Neceſſity of Truth hath here and there extorted from him, that which amounts no leſs to the Dignity of Monarchy; he confeſſeth it to be Firſt, the Natural, and the Divineſt Form of Government; and that the Gods themſelves did live under a Monarchy. What can a Heathen ſay more?

Indeed, the World for a long time knew no other ſort of Government, but only Monarchy. The Beſt Order, the Greateſt Strength, the Moſt Stability and Eaſieſt Government, are to be found all in Monarchy, and in no other Form of Government. The New Platforms of Commonweals, were firſt hatched in a Corner of the World, amongſt a few Cities of *Greece*, which have been imitated by very few other places. Thoſe very Cities were

were first, for many years, governed by Kings, untill *Wantonneſs*, *Ambition* or *Faction* of the People, made them attempt New kinds of Regiment; all which Mutations proved moſt Bloody and Miſerable to the Authors of them; happy in nothing, but that they continued but a ſmall time.

(11.) A little to manifeſt the Imperfection of Popular Government, let us but examine the moſt Flouriſhing Democratie that the World hath ever known; I mean that of *Rome*. Firſt, for the *Durability*; at the moſt, it laſted but 480 Years (for ſo long it was from the Expulſion of *Tarquin*, to *Julius Cæſar*.) Whereas both the *Aſſyrian* Monarchy laſted, without Interruption, at the leaſt twelve hundred years, and the Empire of the *Eaſt* continued 1495 Years.

2. For the Order of it, during theſe 480 years, there was not any One ſettled Form of Government in *Rome*: for after they had once loſt the Natural Power of Kings, they could not find

find upon what Form of Government to reſt: their Fickleneſs is an Evidence that they found things amiſs in every Change. At the Firſt they choſe two *Annual Conſuls* inſtead of Kings. Secondly, thoſe did not pleaſe them long, but they muſt have *Tribunes* of the People to defend their Liberty. Thirdly, they leave *Tribunes* and *Conſuls*, and chooſe them *Ten Men* to make them Laws. Fourthly, they call for *Conſuls* and *Tribunes* again: ſometimes they chooſe *Dictators*, which were Temporary Kings, and ſometimes *Military Tribunes*, who had *Conſular* Power. All theſe ſhiftings cauſed ſuch notable Alteration in the Government, as it paſſeth Hiſtorians to find out any Perfect Form of Regiment in ſo much Confuſion: One while the Senate made Laws, another while the People. The Diſſentions which were daily between the Nobles and the Commons, bred thoſe memorable Seditions about *Uſury*, about *Marriages*, and about *Magiſtracy*. Alſo the *Græcian*, the *Apulian*, and the *Druſian* Seditions, filled the Market-

places, the Temples, and the Capitol it ſelf, with Blood of the Citizens; the *Social* War was plainly Civil; the Wars of the Slaves, and the other of the Fencers; the Civil Wars of *Marius* and *Sylla*, of *Cataline*, of *Cæſar* and *Pompey* the *Triumvirate*, of *Auguſtus*, *Lepidus* and *Antonius*: All theſe ſhed an Ocean of Blood within *Italy* and the Streets of *Rome*.

Thirdly, for their Government, let it be allowed, that for ſome part of this time it was *Popular*, yet it was Popular as to the City of *Rome* only, and not as to the Dominions, or whole Empire of *Rome*; for no *Democratie* can extend further than to One City. It is impoſſible to Govern a Kingdom, much leſs many Kingdoms by the whole People, or by the Greateſt Part of them.

(12.) But you will ſay, yet the *Roman* Empire grew all up under this kind of Popular Government, and the City became Miſtreſs of the World. It is not ſo; for *Rome* began her Empire under *Kings*, and did perfect it under

under Emperours; it did only encreaſe under that Popularity: Her greateſt Exaltation was under *Trajan*, as her longeſt Peace had been under *Auguſtus*. Even at thoſe times, when the *Roman* Victories abroad, did amaze the World, then the Tragical Slaughter of Citizens at home, deſerved Commiſeration from their vanquiſhed Enemies. What though in that Age of her Popularity, ſhe bred many admired Captains and Commanders (each of which was able to lead an Army, though many of them were but ill requited by the People?) yet all of them were not able to ſupport her in times of Danger; but ſhe was forced in her greateſt Troubles to create a *Dictator* (who was a King for a time) thereby giving this Honourable Teſtimony of *Monarchy*, that the laſt Refuge in Perils of States, is to fly to *Regal Authority*. And though *Romes* Popular Eſtate for a while was miraculouſly upheld in Glory by a greater Prudence than her own; yet in a ſhort time, after manifold Alterations, ſhe was ruined by her Own Hands. *Suis &*

ipſa

ipſa Roma viribus ruit: For the Arms ſhe had prepared to conquer other Nations, were turned upon her Self, and Civil Contentions at laſt ſettled the Government again into a Monarchy.

(13.) The Vulgar Opinion is, that the firſt Cauſe why the *Democratical* Government was brought in, was to curb the Tyranny of Monarchies. But the Falſhood of this doth beſt appear by the firſt Flouriſhing Popular Eſtate of *Athens*, which was founded, not becauſe of the Vices of their laſt King, but that his Vertuous Deſerts were ſuch as the people thought no man Worthy enough to ſucceed him; a pretty wanton Quarrel to Monarchy! For when their King *Codrus* underſtood by the Oracle, that his Country could not be ſaved, unleſs the King were ſlain in the Battel: He in Diſguiſe entered his Enemies Camp, and provoked a Common Souldier to make him a Sacrifice for his own Kingdom, and with his Death ended the Royal Government; for after him was never any more

more Kings of *Athens*. As *Athens* thus for Love of her *Codrus*, changed the Government, ſo *Rome* on the contrary, out of Hatred to her *Tarquin*, did the like. And though theſe two famous Commonweals did for contrary cauſes aboliſh Monarchy, yet they both agreed in this, that neither of them thought it fit to change their State into a *Democratie*: but the one choſe *Archontes*, and the other *Conſuls* to be their Governours; both which did moſt reſemble Kings, and continued, untill the People by leſſening the Authority of theſe their Magiſtrates, did by degrees and ſtealth bring in their Popular Government. And I verily believe, never any Democratical State ſhewed it ſelf at firſt fairly to the World by any Elective Entrance, but they all ſecretly crept in by the Back-door of Sedition and Faction.

(14.) If we will liſten to the Judgment of thoſe who ſhould beſt know the Nature of Popular Government, we ſhall find no reaſon for good men to deſire or chooſe it. *Zenophon* that brave

brave Scholar and Souldier diſallowed the *Athenian* Commonweal, for that they followed that Form of Government wherein the Wicked are always in greateſt Credit, and Vertuous men kept under. They expelled *Ariſtides* the Juſt; *Themiſtocles* died in Baniſhment; *Meltiades* in Priſon; *Phocion* the moſt virtuous and juſt man of his Age, though he had been choſen forty five times to be their General, yet he was put to Death with all his Friends, Kindred and Servants, by the Fury of the People, without Sentence, Accuſation, or any Cauſe at all. Nor were the People of *Rome* much more favourable to their Worthies; they baniſhed *Rutilius*, *Metellus*, *Coriolanus*, the Two *Scipio*'s and *Tully*: the worſt men ſped beſt; for as *Zenophon* ſaith of *Athens*, ſo *Rome* was a Sanctuary for all Turbulent, Diſcontented and Seditious Spirits. The Impunity of Wicked men was ſuch, that upon pain of Death, it was forbidden all Magiſtrates to Condemn to Death, or Baniſh any Citizen, or to deprive him of his Liberty, or ſo much

much as to whip him for what Offence ſoever he had committed, either againſt the Gods or Men.

The *Athenians* ſold Juſtice as they did other Merchandiſe; which made *Plato* call a Popular Eſtate a Fair, where every thing is to be ſold. The Officers when they entered upon their Charge, would brag, they went to a *Golden Harveſt*. The Corruption of *Rome* was ſuch, that *Marius* and *Pompey* durſt carry Buſhels of Silver into the Aſſemblies, to purchaſe the Voices of the People. Many Citizens under their Grave Gowns, came Armed into the Publick Meetings, as if they went to War. Often contrary Factions fell to Blows, ſometimes with Stones, and ſometimes with Swords; the Blood hath been ſuckt up in the Market Places with Spunges; the River *Tiber* hath been filled with the Dead Bodies of the Citizens, and the common Privies ſtuffed full with them.

If any man think theſe Diſorders in Popular States were but Caſual, or ſuch as might happen under any kind of Government, he muſt know, that

that ſuch Miſchiefs are Unavoidable, and of neceſſity do follow all *Democratical* Regiments; and the Reaſon is given, becauſe the Nature of all People is, to deſire Liberty without Reſtraint, which cannot be but where the Wicked bear Rule; and if the People ſhould be ſo indiſcreet, as to advance Vertuous Men, they loſe their Power: For that, Good Men would favour none but the Good, which are always the fewer in Number; and the Wicked and Vitious (which is ſtill the Greateſt Part of the People) ſhould be excluded from all Preferment, and in the End, by little and little, Wiſe men ſhould ſeize upon the State, and take it from the People.

I know not how to give a better Character of the People, than can be gathered from ſuch Authors as lived Amongſt or Near the Popular States; *Thucydides*, *Zenophon*, *Livie*, *Tacitus*, *Cicero*, and *Saluſt*, have ſet them out in their Colours. I will borrow ſome of their Sentences:

"There

"There is nothing more uncertain
"than the People; their Opinions are
"as variable and ſuddain as Tem-
"peſts; there is neither Truth nor
"Judgment in them; they are not led
"by Wiſdom to judg of any thing,
"but by Violence and Raſhneſs; nor
"put they any Difference between
"things True and Falſe. After the
"manner of Cattel, they follow the
"Herd that goes before; they have a
"Cuſtom always to favour the Worſt
"and Weakeſt; they are moſt prone
"to Suſpitions, and uſe to Condemn
"men for Guilty upon any falſe Sug-
"geſtion; they are apt to believe all
"News, eſpecially if it be ſorrowful;
"and like Fame, they make it more
"in the Believing; when there is no
'Author, they fear thoſe Evils which
"themſelves have feigned; they are
"moſt deſirous of New Stirrs and
"Changes, and are Enemies to Qui-
"et and Reſt; whatſoever is Giddy
"or Head-ſtrong, they account Man-
"like and Couragious; but whatſoe-
"ver is Modeſt or provident, ſeems
"ſluggiſh; each man hath a Care of
"his

" his Particular, and thinks baſely of "the Common Good; they look up- " on Approaching Miſchiefs as they " do upon Thunder, only every man " wiſheth it may not touch his own " Perſon; it is the Nature of them, " they muſt Serve baſely, or Domi- " neer proudly; for they know no " Mean. Thus do they paint to the Life this Beaſt with many Heads. Let me give you the Cypher of their Form of Government; As it is begot by Sedition, ſo it is nouriſhed by Arms: It can never ſtand without Wars, either with an Enemy abroad, or with Friends at Home. The only Means to preſerve it, is, to have ſome powerful Enemies near, who may ſerve inſtead of a King to Govern it, that ſo, though they have not a King amongſt them, yet they may have as good as a King Over them: For the Common Danger of an Enemy keeps them in better Unity, than the Laws they make themſelves.

(15.) Many

(15) Many have exerciſed their Wits in parallelling the Inconveniences of Regal and Popular Government, but if we will truſt Experience before Speculations Philoſophical, it cannot be denyed but this one Miſchief of Sedition which neceſſarily waits upon all Popularity, weighes down all the Inconveniences that can be found in Monarchy, though they were never ſo many. It is ſaid, Skin for Skin, yea, all that a man hath will he give for his Life; and a man will give his Riches for the ranſome of his Life. The way then to examine what Proportion the miſchiefs of Sedition and Tyranny have one to another, is to enquire in what kind of Government moſt Subjects have loſt their Lives: Let *Rome* which is magnified for her Popularity, and vilified for the Tyrannical Monſters the Emperours, furniſh us with Examples. Conſider whether the Cruelty of all the Tyrannical Emperours that ever ruled in this City did ever ſpill a quarter of the Blood that was poured out in the laſt hundred years of her glorious Common-wealth. The Murthers by *Tyberius*, *Domitian*, and *Commodus*, put all together, cannot match that Ci-

vil Tragedy which was acted in that one Sedition between *Marius* and *Sylla*, nay, even by *Sylla*'s part alone (not to mention the Acts of *Marius*) were fourſcore and ten Senators put to death, fifteen Conſuls, two thouſand and ſix hundred Gentlemen, and a hundred thouſand others.

This was the Heighth of the *Roman* Liberty: Any Man might be killed that would. A favour not fit to be granted under a Royal Government. The Miſeries of thoſe Licentious Times are briefly touched by *Plutarch* in theſe Words. *Sylla* (ſaith he) fell to ſheding of Bloud, and filled all *Rome* with infinite and unſpeakable Murthers——This was not only done in *Rome*, but in all the Cities of *Italy* throughout, there was no Temple of any God whatſoever, no Altar in any bodies Houſe, no Liberty of Hoſpital, no Fathers Houſe, which was not embrewed with Blood, and horrible Murthers, the Husbands were ſlain in the Wives Armes, and the Children in the Mothers Laps; and yet they that were Slain for private Malice were nonothing in reſpect of thoſe that were Mur-

Murthered only for their Goods—— He openly Sold their Goods by the Cryer, ſitting ſo proudly in his Chair of State, that it grieved the People more to ſee their goods packt up by them to whom he gave, or diſpoſed them, than to ſee them taken away. Sometimes he would give a whole Countrey, or the whole Revenues of certain Cities, unto Women for their Beauties, or to pleaſant Jeaſters, Minſtrels, or wicked Slaves, made free. And to ſome he would give other mens VVives by force, and make them be Married againſt their wills. Now let *Tacitus* and *Suetonius* be ſearched, and ſee if all their Cruel Emperours can match this Popular Villany, in ſuch an Univerſal Slaughter of Citizens, or Civil Butchery. God only was able to match him, and over-matched him, by fitting him with a moſt remarkable Death, juſt anſwerable to his Life, for as he had been the Death of many thouſands of his Country-men, ſo as many thouſands of his own Kindred in the fleſh were the Death of him, for he died of an Impoſtume, which corrupted his Fleſh in ſuch ſort, that it turned all to Lice, he had many about him to

Shift him continually Night and Day; yet the Lice they wiped from him, were nothing to them that multiplied upon him, there was neither Apparel, Linnen, Bathes, VVaſhings, nor meat it ſelf, but was preſently filled with Swarms of this vile Vermine. I cite not this to extenuate the Bloody Acts of any Tyrannical Princes, nor will I plead in Defence of their Cruelties: Only in the Comparative, I maintain the Miſchiefs to a State to be leſs Univerſal under a Tyrant King; for the Cruelty of ſuch Tyrants extends ordinarily no further then to ſome Particular Men that offend him, and not to the whole Kingdome: It is truly ſaid by his late Majeſty King *James*, a King can never be ſo notoriouſly Vitious, but he will generally favour Juſtice, and maintain ſome Order; except in the particulars wherein his inordinate Luſt carries him away. Even cruel *Domitian*, *Dionyſius* the Tyrant, and many others, are commended by Hiſtorians for great Obſervers of Juſtice: A natural Reaſon is to be rendered for it; It is the Multitude of People, and the abundance of their Riches, which are the only Strength and Glory of every Prince:

Prince: The Bodies of his Subjects do him Service in VVar, and their Goods ſupply his preſent wants, therefore if not out of Affection to his people, yet out of Natural Love to Himſelf, every Tyrant deſires to preſerve the Lives, and protect the Goods of his Subjects, which cannot be done but by Juſtice, and if it be not done, the Princes Loſs is the greateſt; on the contrary, in a Popular State, every man knows the publick good doth not depend wholly on his Care, but the Common-wealth may well enough be governed by others though he tend only his Private Benefit, he never takes the Publick to be his Own Buſineſs; thus as in a Family, where one Office is to be done by many Servants, one looks upon another, and every one leaves the Buſineſs for his Fellow, until it is quite neglected by all; nor are they much to be blamed for their Negligence, ſince it is an even Wager, their Ignorance is as great: For Magiſtrates among the People, being for the moſt part Annual, do always lay down their Office before they underſtand it; ſo that a Prince of a Duller underſtanding, by Uſe and

Experience muſt needs excell them; again, there is no Tyrant ſo barbarouſly Wicked, but his own reaſon and ſenſe will tell him, that though he be a God, yet he muſt dye like a Man; and that there is not the Meaneſt of his Subjects but may find a means to revenge himſelf of the Injuſtice that is offered him: hence it is that great Tyrants live continually in baſe fears, as did *Dionyſius* the Elder; *Tiberius*, *Caligula*, and *Nero* are noted by *Suetonius* to have been frighted with Panick fears. But it is not ſo, where wrong is done to any Particular Perſon by a Multitude, he knows not who hurt him, or who to complain of, or to whom to addreſs himſelf for reparation. Any man may boldly exerciſe his Malice and Cruelty in all Popular Aſſemblies. There is no Tyranny to be compared to the Tyranny of a Multitude.

(16) What though the Government of the People be a thing not to be endured, much leſs defended, yet many men pleaſe themſelves with an Opinion, that though the People may not Govern; yet they may partake and

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joyn with a King in the Government, and ſo make a State mixed of Popular and Regal power, which they take to be the beſt tempered and equalleſt Form of Government. But the vanity of this Fancy is too evident, it is a meer Impoſſibility or Contradiction, for if a King but once admit the People to be his Companions, he leaves to be a King, and the State becomes a Democracy; at leaſt, he is but a Titular and no Real King, that hath not the Soveraignty to Himſelf; for the having of this alone, and nothing but this makes a King to be a King. As for that Shew of Popularity which is found in ſuch Kingdoms as have General Aſſemblies for Conſultation about making Publick Laws: It muſt be remembred that ſuch Meetings do not Share or divide the Soveraignty with the Prince: but do only deliberate and adviſe their Supreme Head, who ſtill reſerves the Abſolute power in himſelf; for if in ſuch Aſſemblies, the King, the Nobility, and People have equal Shares in the Soveraignty, then the King hath but one Voice, the Nobility likewiſe one, and the People one, and then any two of theſe Voices ſhould

have Power to over-rule the third; thus the Nobility and Commons together ſhould have Power to make a Law to bind the King, which was never yet ſeen in any Kingdom, but if it could, the State muſt needs be Popular and not Regal.

(17) If it be Unnatural for the Multitude to chuſe their Governours, or to Govern, or to partake in the Government, what can be thought of that damnable Concluſion which is made by too many, that the Multitude may Correct, or Depoſe their Prince, if need be? Surely the Unnaturalneſs, and Injuſtice of this Poſition cannot ſufficiently be expreſſed: For admit that a King make a Contract or Paction with his people, either Originally in his Anceſtors, or perſonally at his Coronation (for both theſe Pactions ſome dream of, but cannot offer any proof for either) yet by no Law of any Nation can a Contract be thought broken, except that firſt a Lawful Tryal be had by the Ordinary Judge of the Breakers thereof, or elſe every Man may be both Party and Judge in his own caſe, which is abſur'd once to be thought,

thought, for then it will lye in the hands of the headleſs Multitude when they pleaſe to caſt off the Yoke of Government (that God hath laid upon them) to judge and puniſh him, by whom they ſhould be Judged and puniſhed themſelves. *Ariſtotle* can tell us, what Judges the Multitude are in their own caſe, οἱ πλειστοῖ φαῦλοι χείρες περὶ τῶν ἰδίων, The Judgment of the Multitude in Diſpoſing of the Soveraignty may be ſeen in the *Roman* Hiſtory, where we may find many good Emperours Murthered by the People, and many bad Elected by them: *Nero, Heliogabalus, Otho, Vitellius,* and ſuch other Monſters of Nature, were the Minions of the Multitude, and ſet up by them: *Pertinax, Alexander, Severus, Gordianus, Gallus Emilianus, Quintilius, Aurelianus, Tacitus, Probus,* and *Numerianus*; all of them good Emperours in the Judgment of all Hiſtorians, yet Murthered by the Multitude.

(18) Whereas many out of an imaginary Fear pretend the power of the people to be neceſſary for the repreſſing of the

the Inſolencies of Tyrants; wherein they propound a Remedy far worſe than the Diſeaſe, neither is the Diſeaſe indeed ſo frequent as they would have us think, Let us be jugded by the Hiſtory even of our own Nation: We have enjoyed a Succeſſion of Kings from the Conqueſt now for above 600 years (a time far longer than ever yet any Popular State could continue) we reckon to the Number of twenty ſix of theſe Princes ſince the *Norman* Race, and yet not one of theſe is taxed by our Hiſtorians for Tyrannical Government. It is true, two of theſe Kings have been Depoſed by the people, and barbarouſly Murthered, but neither of them for Tyranny: For as a learned Hiſtorian of our Age ſaith, *Edward* the Second and *Richard* the Second were not inſupportable either in their Nature or Rule, and yet the people, more upon Wantonneſs than for any Want, did take an unbridled Courſe againſt them. *Edward* the ſecond, by many of our Hiſtorians is reported to be of a Good and Vertuous Nature, and not Unlearned: they impute his defects rather to Fortune than either to Council or Carriage of his Affairs, the Depoſition

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on of him was a violent Fury, led by a Wife both Cruel and unchaſt, and can with no better Countenance of Right be juſtifyed, than may his lamentable both Indignities and Death it ſelf. Likewiſe the Depoſition of King *Richard* II, was a tempeſtuous Rage, neither Led or Reſtrained by any Rules of Reaſon or of State —— Examin his Actions without a diſtempered Judgment, and you will not Condemne him to be exceeding either Inſufficient or Evil; weigh the Imputations that were objected againſt him, and you ſhall find nothing either of any Truth or of great moment; *Hollingshed* writeth, That he was moſt Unthankfully uſed by his Subjects; for although, through the frailty of his Youth, he demeaned himſelf more diſſolutely than was agreeable to the Royalty of his Eſtate, yet in no Kings Days were the Commons in greater Wealth, the Nobility more honoured, and the Clergy leſs wronged; who notwithſtanding, in the Evil guided Strength of their will, took head againſt him, to their own headlong deſtruction afterwards; partly during the Reign of *Henry*, his next Succeſſor, whoſe greateſt

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Atchievements were againſt his own People, in Executing thoſe who Conſpired with him againſt King *Richard*: But more eſpecially in ſucceeding times, when, upon occaſion of this Diſorder, more *Engliſh* Blood was ſpent, than was in all the Foreign Wars together which have been ſince the Conqueſt.

Twice hath this Kingdom been miſerably waſted with Civil War, but neither of them occaſioned by the Tyranny of any Prince. The Cauſe of the Baron's Wars is by good Hiſtorians attributed to the ſtubbornneſs of the Nobility, as the Bloody variance of the Houſes of *York* and *Lancaſter*, and the late Rebellion, ſprung from the Wantonneſs of the People. Theſe three Unnatural Wars have diſhonoured our Nation amongſt Strangers, ſo that in the Cenſures of Kingdoms, the King of *Spain* is ſaid to be the King of Men, becauſe of his Subjects willing Obedience; the King of *France* King of Aſſes, becauſe of their infinite Taxes and Impoſitions; but the King of *England* is ſaid to be the King of *Devils*, becauſe of his Subjects often Inſurrections againſt, and Depoſitions of their Princes.

CHAP.

CHAP. III.

Positive Laws do not infringe the Natural and Fatherly Power of Kings.

(1.) *REgal Authority not subject to the Positive Laws, Kings before Laws; the King of* Judah *and* Israel *not tyed to Laws.* (2.) *Of* Samuel's *Description of a King,* 1 Sam. 8. (3.) *The Power ascribed unto Kings in the* New Testament. (4.) *Whether Laws were invented to bridle Tyrants.* (5.) *The Benefit of Laws.* (6.) *Kings keep the Laws, though not bound by the Laws.* (7.) *Of the Oathes of Kings.* (8.) *Of the Benefit of the King's Prerogative over Laws.* (9.) *The King the Author, the Interpreter, and Corrector, of the Common Laws.* (10.) *The King, Judge in all Causes both before the Conquest and since.* (11.) *The King and his Council have anciently determined Causes in the Star-Chamber.* (12.) *Of Parliaments.*

ments. (13.) *When the People were first called to Parliament.* (14.) *The Liberty of Parliaments, not from Nature, but from Grace of the Princes.* (15.) *The King alone makes Laws in Parliament.* (16.) *Governs both Houses as Head by himself.* (17.) *By his Council.* (18.) *By his Judges.*

(1.) HItherto I have endeavour'd to shew the Natural Institution of Regal Authority, and to free it from Subjection to an Arbitrary Election of the People: It is necessary also to enquire whether Humane Laws have a Superiority over Princes; because those that maintain the Acquisition of Royal Jurisdiction from the people, do subject the Exercise of it to Positive Laws. But in this also they Erre, for as Kingly Power is by the Law of God, so it hath no inferiour Law to limit it.

The Father of a Family Governs by no other Law than by his own Will; not by the Laws and Wills of his Sons or Servants. There is no Nation that allows Children any Action or Remedy for

for being unjuſtly Governed; and yet for all this every Father is bound by the Law of Nature to do his beſt for the preſervation of his Family; but much more is a King always tyed by the ſame Law of Nature to keep this general ground, That the ſafety of the Kingdom be his Chief Law: He muſt remember, That the profit of every man in particular, and of all together in general, is not always One and the ſame; and that the Publick is to be preferred before the Private; And that the force of Laws muſt not be ſo great as Natural Equity it ſelf, which cannot fully be compriſed in any Laws whatſoever, but is to be left to the Religious Atchievement of thoſe who know how to manage the Affaires of State, and wiſely to Ballance the particular profit with the Counterpoize of the Publick, according to the infinite Variety of Times, Places, Perſons; a proof unanſwerable, for the Superiority of Princes above Laws, is this, That there were Kings long before there were any Laws: For a long time the Word of a King was the only Law; and if Practice (as ſaith Sir *Walter Raleigh*) declare the greatneſs of Authority, even the beſt

Kings

Kings of *Judah* and *Iſrael* were not tyed to any Law; but they did what-ſoever they pleaſed, in the greateſt matters.

(2) The Unlimitted Juriſdiction of Kings is ſo amply deſcribed by *Samuel*, that it hath given Occaſion to ſome to Imagine, that it was, but either a Plot or Trick of *Samuel* to keep the Government himſelf and Family, by frighting the *Iſraelites* with the miſchiefs in Monarchy, or elſe a prophetical Deſcription only of the future Ill Government of *Saul*: But the Vanity of theſe Conjectures are judiciouſly diſcovered in that Majeſtical Diſcourſe of the true Law of free Monarchy; Wherein it is evidently ſhewed, that the ſcope of *Samuel* was to teach the People a dutiful Obedience to their King, even in thoſe things which themſelves did eſteem Miſchievous and Inconvenient; For by telling them what a King would do, he indeed inſtructs them what a Subject muſt Suffer; yet not ſo that it is Right for Kings to do Injury, but it is Right for them to go Unpuniſhed by the People if they do it: So that in this point it is all one, whether *Samuel* deſcribe a King, or a Tyrant, for

for Patient Obedience is due to both; no Remedy in the Text againſt Tyrants, but in Crying and praying unto God in that Day. But howſoever in a Rigorous Conſtruction *Samuel*'s deſcription be applyed to a Tyrant; yet the Words by a Benigne Interpretation may agree with the manners of a Juſt King; and the Scope and Coherence of the Text doth beſt imply the more Moderate, or Qualified Senſe of the Words; for as Sir *W. Raleigh* confeſſes, all thoſe Inconveniences and Miſeries which are reckoned by *Samuel* as belonging to Kingly Government were not Intollerable, but ſuch as have been born, and are ſtill born, by free Conſent of Subjects towards their Princes; Nay at this day, and in this Land, many Tenants by their Tenures and Services are tyed to the ſame Subjection, even to Subordinate and Inferior Lords: To ſerve the King in his Wars, and to till his ground, is not only agreeable to the Nature of Subjects, but much deſired by them; according to their ſeveral Births, and Conditions: The like may be ſaid for the Offices of Women-Servants, Confectioners, Cooks, and Bakers, for we cannot think that the

King would use their Labours without giving them Wages, since the Text it self mentions a Liberal reward of his Servants.

As for the taking of the Tenth of their Seed, of their Vines, and of their Sheep, it might be a necessary Provision for their Kings Household, and so belong to the Right of Tribute: For whereas is mentioned the taking of the Tenth; it cannot agree well to a Tyrant, who observes no Proportion, in fleecing his People.

Lastly, The taking of their Fields, Vineyards, and Olive-trees, if it be by Force or Fraud, or without just Recompence, to the Dammage of Private Persons only, it is not to be defended; but if it be upon the publick Charge and General Consent, it might be justifyed, as necessary at the first Erection of a Kingdome; For those who will have a King, are bound to allow him Royal maintenance, by providing Revenues for the CROWN, Since it is both for the Honour, Profit and Safety too of the People to have their King

Glorious, Powerful, and abounding in Riches, beſides weall know the Lands and Goods of many Subjects may be oft-times Legally taken by the King, either by Forfeitures, Eſcheat, Attainder, Out-lawry, Confiſcation, or the like. Thus we ſee *Samuel*'s Character of a King may literally well bear a mild Senſe, for greater probability there is that *Samuel* ſo meant, and the *Iſraelites* ſo underſtood it; to which this may be added, that *Samuel* tells the *Iſraelites*, this will be the manner of the King that ſhall Reign over you: And Ye ſhall cry becauſe of your King which Ye ſhall have choſen you; that is to ſay: Thus ſhall be the common Cuſtom or Faſhion, or Proceeding of *Saul* your King; Or as the Vulgar Latine renders it, this ſhall be the Right or Law of your King; not meaning as ſome expound it, the Caſual Event, or Act of ſome *individuum vagum*, or indefinite King, that might happen one day to Tyranniſe over them. So that *Saul*, and the Conſtant practice of *Saul*, doth beſt agree with the Literal Senſe of the Text. Now that *Saul* was no Tyrant, we may note that the People *asked a King, as All Nations had.*

God answers, and bids *Samuel* to *hear the Voice of the People, in all things which they ſpake*, and *appoint them a King*. They did not ask a Tyrant, and to give them a Tyrant, when they asked a King, had not been to hear their Voice in all things, but rather when they asked an Egge, to have given them a Scorpion: Unleſs we will ſay, that all Nations had Tyrants. Beſides, we do not find in all Scripture, that *Saul* was Puniſhed, or ſo much as Blamed, for committing any of thoſe Acts which *Samuel* deſcribes: and if *Samuel's* drift had been only to terrifie the People, he would not have forgotten to foretell *Saul's* bloody Cruelty, in Murthering 85 innocent Prieſts, and ſmiteing with the Edge of the Sword the City of *Nob*, both Man, Woman, and Child. Again, the *Iſraelites* never ſhrank at theſe Conditions propoſed by *Samuel*, but accepted of them, as ſuch as all other Nations were bound unto. For their Concluſion is, *Nay, but we will have a King over Us, that We alſo may be like all the Nations, and that Our King may Judge us, and go out before us to fight our Battels.* Meaning he ſhould earn his Privileges, by doing the work for them

them, by Judging them, and Fighting for them. Lastly, Whereas the mention of the Peoples Crying unto the Lord, argues they should be under some Tyrannical Oppression; we may remember, that the Peoples Complaints and Cries are not always an Argument of their Living under a Tyrant. No man can say King *Solomon* was a Tyrant, yet all the Congregation of *Israel* complain'd that *Solomon* made their Yoke grievous, and therefore their Prayer to *Rehoboam* is, *Make thou the grievous Service of thy Father* Solomon, *and his heavy Yoke which he put upon us, lighter, and we will serve thee.* To conclude, it is true, *Saul* lost his Kingdom, but not for being too Cruel or Tyrannical to his Subjects, but by being too Merciful to his Enemies; his sparing *Agag* when he should have slain him, was the Cause why the Kingdom was torn from him.

(3.) If any desire the direction of the New Testament, he may find our Saviour limiting and distinguishing Royal Power, *By giving to* Cæsar *those things that were* Cæsar's, *and to God those things*

that were God's. Obediendum eſt in quibus mandatum Dei non impeditur. We muſt obey where the Commandment of God is not hindred; there is no other Law but Gods Law to hinder our Obedience. It was the Anſwer of a Chriſtian to the Emperour, *We only worſhip God, in other things we gladly ſerve you.* And it ſeems *Tertullian* thought whatſoever was not God's was the Emperours, when he ſaith, *Bene oppoſuit* Cæſari *pecuniam, te ipſum Deo, alioqui quid erit Dei, ſi omnia* Cæſaris. Our Saviour hath well apportioned our Money for *Cæſar*, and our ſelves for God, for otherwiſe what ſhall God's ſhare be, if all be *Cæſar's*. The Fathers mention no Reſervation of any Power to the Laws of the Land, or to the People. S. *Ambroſe*, in his Apologie for *David*, expreſly ſaith, He was a King, and therefore bound to no Laws, becauſe Kings are free from the Bonds of any Fault. S. *Auguſtine* alſo reſolves, *Imperator non eſt ſubjectus Legibus, qui habet in poteſtate alias Leges ferre.* The Emperour is not ſubject to Laws, who hath Power to make other Laws. For indeed, it is the Rule of *Solomon*, that *We muſt keep the King's Commandment*, and

and not to ſay, *What doſt Thou?* becauſe *Where the Word of a King is, there is Power*, and All that he pleaſeth, he will do.

If any miſlike this Divinity in *England*, let him but hearken to *Bracton*, Chief Juſtice in *Henry* the Third's days, which was ſince the Inſtitution of *Parliaments*, his words are, ſpeaking of the King, *Omnes ſub Eo, & Ipſe ſub nullo, niſi tantum ſub Deo*, &c. All are under him, and he under none, but God only: If he offend, ſince no Writ can go againſt him, their Remedy is by Petitioning him to amend his Fault, which if he ſhall not do, it will be Puniſhment ſufficient for him to expect God as a Revenger: Let none preſume to Search into his Deeds, much leſs to Oppoſe them.

When the *Jews* asked our Bleſſed Saviour, whether they ſhould pay Tribute? he did not firſt demand what the Law of the Land was, or whether there was any Statute *againſt it*, nor enquired whether the Tribute were given by Conſent of the people, nor adviſed them to ſtay their payment till

they ſhould grant it; he did no more but look upon the Superſcription, and concluded, *This Image you ſay is* Cæſar's, *therefore give it to* Cæſar. Nor muſt it here be ſaid, that *Chriſt* taught this Leſſon only to the conquered *Jews*, for in this he gave direction for all Nations, who are bound as much in Obedience to their Lawful Kings, as to any *Conquerour* or *Uſurper* whatſoever.

Whereas being *ſubject to the Higher Powers*, ſome have ſtrained theſe words to ſignifie the Laws of the Land, or elſe to mean the Higheſt Power, as well Ariſtocratical and Democratical, as Regal: It ſeems S. *Paul* looked for ſuch Interpretation, and therefore thought fit to be his own Expoſitor, and to let it be known, that by Power he underſtood a Monarch that carryed a Sword: *Wilt thou not be afraid of the Power?* that is, the Ruler that carryeth the Sword, for *he is the Miniſter of God to thee* —— *for he beareth not the Sword in vain.* It is not the Law that is the Miniſter of God, or that carries the Sword, but the Ruler or Magiſtrate; ſo they that ſay the Law governs the Kingdom, may as well

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ſay that the Carpenters Rule builds an Houſe, and not the Carpenter; for the Law is but the Rule or Inſtrument of the Ruler. And S. *Paul* concludes; *for this cauſe pay you tribute alſo, for they are Gods Miniſters attending continually upon this very thing. Render therefore Tribute to whom Tribute is due, Cuſtom to whom Cuſtom.* He doth not ſay, give as a gift to Gods Miniſter. But ἀπόδοτε, Render or Reſtore Tribute, as a due. Alſo St. *Peter* doth moſt clearly expound this place of St. *Paul*, where he ſaith, *Submit your ſelves to every Ordinance of Man, for the Lords ſake, whether it be to the King as Supreme, or unto Governours, as unto them that are ſent by him.* Here the very ſelf ſame Word (Supreme, or ὑπερεχούσαις) which St. *Paul* coupleth with Power, St. *Peter* conjoineth with the King, βασιλεῖ ὡς ὑπερέχοντι, thereby to manifeſt that King and Power are both one. Alſo St. *Peter* expounds his own Words of Humane Ordinance, to be the King, who is the *Lex Loquens*, a Speaking Law; he cannot mean that Kings themſelves are an human Ordinance, ſince St. *Paul* calls the Supreme Power, The Ordinance of God; and the

the Wiſdom of God ſaith, *By me Kings Reign*: But his meaning muſt be, that the Laws of Kings are Human Ordinances. Next, the *Governours that are ſent by him*; that is by the King, not by God, as ſome corruptly would wreſt the Text, to juſtifie Popular Governours as authorized by God, whereas in Gramatical Conſtruction [Him] the Relative muſt be referred to the next Antecedent, which is King; Beſides, the Antitheſis between Supreme and Sent, proves plainly that the Governours were ſent by Kings; for if the Governours were ſent by God, and the King be an Humane Ordinance, then it follows, that the Governours were Supreme, and not the King; Or if it be ſaid, that both King and Governours are ſent by God, then they are both equal, and ſo neither of them Supreme. Therefore St. *Peter's* meaning is in ſhort, obey the Laws of the King, or of his Miniſters. By which it is evident, that neither St. *Peter*, nor S. *Paul*, intended other Form of Government than only Monarchical, much leſs any Subjecton of Princes to Humane Laws.

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That familiar distinction of the Schoolmen, whereby they Subject Kings to the Directive, but not to the Coactive Power of Laws, is a Confession that Kings are not bound by the Positive Laws of any Nation: Since the Compulsory Power of Laws is that which properly makes Laws to be Laws; by binding men by Rewards or Punishment to Obedience; whereas the Direction of the Law, is but like the advice and direction which the Kings Council gives the King, which no man says is a Law to the King.

(4) There want not those who Believe that the first invention of Laws was to Bridle and moderate the over-great Power of Kings; but the truth is, the Original of Laws was for the keeping of the Multitude in Order: Popular Estates could not Subsist at all without Laws; whereas Kingdoms were Govern'd many Ages without them. The People of *Athens*, as soon as they gave over Kings, were forced to give Power to *Draco* first, then to *Solon*, to make them Laws,

Laws, not to bridle Kings, but themſelves; and though many of their Laws were very Severe and Bloody, yet for the Reverence they bare to their Law-makers they willingly ſubmitted to them. Nor did the People give any Limited Power to *Solon*, but an Abſolute Juriſdiction, at his pleaſure to Abrogate and Confirm what he thought fit; the People never challenging any ſuch Power to themſelves: So the People of *Rome* gave to the *Ten Men*, who were to chuſe and correct their Laws for the *Twelve Tables*, an Abſolute Power, without any Appeal to the people.

(5.) The reaſon why Laws have been alſo made by Kings, was this, when Kings were either buſyed with Wars, or diſtracted with Publick Cares, ſo that every private man could not have acceſſe to their perſons, to learn their Wills and Pleaſure; then of neceſſity were Laws invented, that ſo every particular Subject might find his *Prince's Pleaſure* decyphered unto him in the Tables of his Laws, that ſo there might be no need to reſort to the King; but either for the Interpretation or Mitigation of Obſcure

ſcure or Rigorous Laws, or elſe in new Caſes, for a Supplement where the Law was Defective. By this means both King and People were in many things eaſed: Firſt, The King by giving Laws doth free himſelf of great and intolerable Troubles, as *Moſes* did himſelf by chuſing *Elders*. Secondly, The people have the Law as a Familiar Admoniſher and Interpreter of the King's pleaſure, which being publiſhed throughout the Kingdom, doth repreſent the Preſence and Majeſty of the King: Alſo the Judges and Magiſtrates, (whoſe help in giving Judgment in many Cauſes Kings have need to uſe) are reſtrained by the Common Rules of the Law from uſing their own Liberty to the injury of others, ſince they are to judge according to the Laws, and not follow their own Opinions.

(6.) Now albeit Kings, who make the Laws, be (as King *James* teacheth us) above the Laws; yet will they Rule their Subjects by the Law; and a King, governing in a ſetled Kingdom, leaves to be a King, and degenerates into a Tyrant, ſo ſoon as he ſeems to Rule according to his

his Laws; yet where he ſees the Laws Rigorous or Doubtful, he may mitigate and interpret. General Laws made in Parliament, may, upon known Reſpects to the King, by his Authority be Mitigated or Suſpended, upon Cauſes only known to him. And although a King do frame all his Actions to be according to the Laws, yet he is not bound thereto, but at his good Will, and for good Example: Or ſo far forth as the General Law of the Safety of the Common-Weale doth naturally bind him; for in ſuch ſort only Poſitive Laws may be ſaid to bind the King, not by being Poſitive, but as they are naturally the Beſt or Only Means for the Preſervation of the Common-Wealth. By this means are all Kings, even Tyrants and Conquerours, bound to preſerve the Lands, Goods, Liberties, and Lives of all their Subjects, not by any Municipial Law of the Land, ſo much as the Natural Law of a Father, which binds them to ratifie the Acts of their Fore-Fathers and Predeceſſors, in things neceſſary for the Publick Good of their Subjects.

(7.) Others there be that affirm, That although Laws of themſelves do not bind Kings, yet the Oaths of Kings at their Coronations tye them to keep all the Laws of their Kingdoms. How far this is true, let us but examine the Oath of the Kings of *England* at their Coronation; the words whereof are theſe, *Art thou pleaſed to cauſe to be adminiſtred in all thy Judgments indifferent and upright Juſtice, and to uſe Diſcretion with Mercy and Verity? Art thou pleaſed that our upright Laws and Cuſtoms be obſerved, and doſt thou promiſe that thoſe ſhall be protected and maintained by thee?* Theſe two are the Articles of the King's Oath, which concern the Laity or Subjects in General; to which the King anſwers affirmatively. Being firſt demanded by the Arch-biſhop of *Canterbury*, *Pleaſeth it you to confirm and obſerve the Laws and Cuſtoms of Ancient Times, granted from God, by juſt and devout Kings, unto the* Engliſh *Nation, by Oath unto the ſaid People. Eſpecially the Laws, Liberties, and Cuſtoms granted unto the Clergy and Laity by the famous King* Edward. We may obſerve, in theſe words of the Articles

of

of the Oath, that the King is required to obſerve not all the Laws, but only the Upright, and that with Diſcretion and Mercy. The Word Upright cannot mean all Laws, becauſe in the Oath of *Richard* the Second, I find Evil and Unjuſt Laws mentioned, which the King ſwears to aboliſh; and in the *Old Abridgment* of *Statutes*, ſet forth in *Henry* the Eighth's days, the King is to ſwear wholly to put out Evil Laws; which he cannot do, if he be bound to all Laws. Now what Laws are Upright and what Evil, who ſhall judge but the King, ſince he ſwears to adminiſter Upright Juſtice with Diſcretion and Mercy (or as *Bracton* hath it) *æquitatem præcipiat, & miſericordiam.* So that in effect, the King doth ſwear to keep no Laws, but ſuch as in *His Judgment* are Upright, and thoſe not literally always, but according to Equity of his Conſcience, join'd with Mercy, which is properly the Office of a Chancellour rather than of a Judge; and if a King did ſtrictly ſwear to obſerve all the Laws, he could not without Perjury give his Conſent to the Repealing or Abrogating of any Statute by Act of Parliament, which would

would be very miſchievable to the State.

But let it be ſuppoſed for truth, that Kings do ſwear to obſerve all the Laws of their Kingdoms, yet no man can think it reaſon that Kings ſhould be more bound by their Voluntary Oaths than Common Perſons are by theirs. Now if a private perſon make a Contract, either with Oath or without Oath, he is no further bound than the Equity and Juſtice of the Contract ties him; for a man may have Relief againſt an unreaſonable and unjuſt promiſe, if either Deceit, or Errour, or Force, or Fear induced him thereunto: Or if it be hurtful or grievous in the performance. Since the Laws in many Caſes give the King a Prerogative above Common Perſons, I ſee no Reaſon why he ſhould be denyed the Priviledge which the meaneſt of his Subjects doth enjoy.

Here is a fit place to examine a Queſtion which ſome have moved, Whether it be a ſin for a Subject to diſobey the King, if he Command any thing contrary to his Laws? For ſatisfaction in this

point, we must resolve, that not only in Human Laws, but even in Divine, a thing may be commanded contrary to Law, and yet Obedience to such a Command is necessary. The sanctifying of the Sabbath is a Divine Law; yet if a Master Command his Servant not to go to Church upon a Sabbath-day, the Best Divines teach us, That the Servant must obey this Command, though it may be Sinful and Unlawful in the Master; because the Servant hath no Authority or Liberty to Examine and Judge whether his Master Sin or no in so Commanding; for there may be a just Cause for a Master to keep his Servant from Church, as appears *Luke* 14. 5. yet it is not fit to tye the Master to acquaint his Servant with his Secret Counsels, or present Necessity: And in such Cases, the Servants not going to Church, becomes the Sin of the Master, and not of the Servant. The like may be said of the King's Commanding a man to serve him in the Wars, he may not Examine whether the War be Just or Unjust, but must Obey, since he hath no Commission to Judge of the Titles of Kingdoms, or Causes of War; nor hath any Subject Power

Power to Condemn his King for breach of his own Laws.

(8.) Many will be ready to say, It is a Slavish and Dangerous Condition to be subject to the Will of any One Man, who is not subject to the Laws. But such men consider not, 1. That the Prerogative of a King is to be above all Laws, for the good only of them that are under the Laws, and to defend the Peoples Liberties, as His Majesty graciously affirmed in His *Speech* after His last Answer to the Petition of *Right*: Howsoever some are afraid of the Name of *Prerogative*, yet they may assure themselves the Case of Subjects would be desperately miserable without it. The Court of *Chancery* it self is but a Branch of the Kings Prerogative, to Relieve men against the inexorable rigour of the Law, which without it is no better than a Tyrant, since *Summum Jus*, is *Summa Injuria*. General Pardons, at the Coronation and in Parliaments, are but the Bounty of the Prerogative. 2. There can be no Laws without a Supreme Power to command or make them. In all *Aristocraties* the Nobles are above the Laws, and in all *Demo-*

craties the People. By the like Reaſon, in a Monarchy the King muſt of neceſſity be above the Laws; there can be no Soveraign Majeſty in him that is under them; that which giveth the very Being to a King is the Power to give Laws; without this Power He is but an Equivocal King. It skills not which way Kings come by their Power, whether by *Election, Donation, Succeſſion,* or by any other means; for it is ſtill the manner of the Government by Supreme Power that makes them properly Kings, and not the means of obtaining their Crowns. Neither doth the Diverſity of Laws, nor contrary Cuſtoms, whereby each Kingdom differs from another, make the Forms of Common-Weal different, unleſs the Power of making Laws be in ſeveral Subjects.

For the Confirmation of this point, *Ariſtotle* ſaith, That a perfect Kingdom is that wherein the King rules all things according to his Own Will, for he that is called a King according to the Law, makes no kind of Kingdom at all. This it ſeems alſo the *Romans* well underſtood to be moſt neceſſary in a Monarchy; for though

though they were a People moſt greedy of Liberty, yet the Senate did free *Auguſtus* from all Neceſſity of Laws, that he might be free of his own Authority, and of abſolute Power over himſelf and over the Laws, to do what he pleaſed, and leave undone what he liſt, and this Decree was made while *Auguſtus* was yet abſent. Accordingly we find, that *Ulpian* the great Lawyer delivers it for a Rule of the Civil Law; *Princeps, Legibus ſolutus eſt.* The Prince is not bound by the Laws.

(9) If the Nature of Laws be adviſedly weighed, the Neceſſity of the Princes being above them may more manifeſt it ſelf; we all know that a Law in General is the command of a Superior Power. Laws are divided (as *Bellermine* divides the Word of God) into written and unwritten, not for that it is not Written at all, but becauſe it was not Written by the firſt Deviſers or Makers of it. The Common Law (as the Lord Chancellor *Egerton* teacheth us) is the Common Cuſtom of the Realm. Now concerning Cuſtoms, this muſt be conſidered, that for every Cuſtom there was a time when it was no Cuſtom; and the firſt

Preſident we now have, had no Preſident when it began; when every Cuſtom began, there was ſomething elſe than Cuſtom that made it lawful, or elſe the beginning of all Cuſtoms were unlawful. Cuſtoms at firſt became Lawful only by ſome Superiour, which did either Command or Conſent unto their beginning. And the firſt Power which we find (as it is confeſſed by all men) is the Kingly Power, which was both in this and in all other Nations of the World, long before any Laws, or any other kind of Government was thought of; from whence we muſt neceſſarily infer, that the Common Law it ſelf, or Common Cuſtoms of this Land, were Originally the Laws and Commands of Kings at firſt unwritten.

Nor muſt we think the Common Cuſtoms (which are the Principles of the Common Law, and are but few) to be ſuch, or ſo many, as are able to give ſpecial Rules to determine every particular Cauſe. Diverſity of Caſes are infinite, and impoſſible to be regulated by any Law; and therefore we find, even in the Divine Laws which are delivered by

by *Moſes*, there be only certain Principal Laws, which did not determine but only direct the High-prieſt or Magiſtrate, whoſe Judgment in ſpecial Caſes did determine, what the General Law intended. It is ſo with the Common Law, for when there is no perfect Rule, Judges do reſort to thoſe Principles, or Common Law Axiomes, whereupon former Judgments, in Caſes ſome-what like, have been delivered by former Judges, who all receive Authority from the King, in his Right and Name to give Sentence according to the Rules and Preſidents of Antient Times: And where Preſidents have failed, the Judges have reſorted to the General Law of Reaſon, and accordingly given Judgment, without any Common Law to direct them. Nay, many times, where there have been Preſidents to direct, they, upon better Reaſon only, have Changed the Law, both in Cauſes Criminal and Civil, and have not inſiſted ſo much on the Examples of former Judges, as examined and corrected their Reaſons; thence it is that ſome Laws are now obſolete and out of uſe, and the Practice quite contrary to what it was in

Former Times, as the Lord Chancellor *Egerton* proves, by ſeveral Inſtances.

Nor is this ſpoken to Derogate from the Common Law, for the Caſe ſtandeth ſo with the Laws of all Nations, although ſome of them have their Laws and Principles Written and Eſtabliſhed: for witneſſe to this, we have *Ariſtotle* his Teſtimony in his *Ethiques*, and in ſeveral places in his *Politiques*; I will cite ſome of them. *Every Law* (ſaith he) *is in the General, but of ſome things there can be no General Law——when therefore the Law ſpeaks in General, and ſomething falls out after beſides the General Rule: Then it is fit that what the Law-maker hath omitted, or where he hath Erred by ſpeaking Generally, it ſhould be corrected or ſupplyed, as if the Law-maker himſelf were Preſent to Ordain it. The Governour, whether he be one Man, or more, ought to be Lord over all thoſe things whereof it was impoſſible the Law ſhould exactly ſpeak, becauſe it is not eaſie to comprehend all things under General Rules——whatſoever the Law cannot Determine, it leaves to the Governour to give Judgment therein, and permits*

mits them to rectifie whatsoever upon Tryal they find to be better than the Written Laws.

Besides, all Laws are of themselves Dumb, and some or other must be trusted with the Application of them to Particulars, by examining all Circumstances, to pronounce when they are broken, or by whom. This work of right Application of Laws is not a thing easie or obvious for ordinary capacities; but requires profound Abilities of Nature, for the beating out of the truth, witness the Diversity, and sometimes the contrariety of Opinions of the learned Judges, in some difficult Points.

(10) Since this is the common Condition of Laws, it is also most reasonable that the Law-maker should be trusted with the Application or Interpretation of the Laws; and for this Cause anciently the Kings of this Land have sitten personally in Courts of Judicature, and are still Representatively present in all Courts; the Judges are but substituted, and called the Kings Justices, and their Power ceaseth when the King is in place. To this purpose, *Bracton*, that learned Chief Justice in the Reign

Reign of *Henry* the Third, ſaith in expreſs terms; In doubtful and obſcure points the Interpretation and Will of our Lord the King is to be expected; ſince it is his part to interpret, who made the Law; for as he ſaith in another place, *Rex, & non Alius debet Judicare, ſi Solus ad id ſufficere poſſit*, &c. *The King, and no body elſe, ought to give Judgment, if He were able, ſince by vertue of his Oath he is Bound to it; therefore the King ought to exerciſe Power as the Vicar or Miniſter of God, but if our Lord the King be not able to determine every cauſe, to eaſe part of his Pains by diſtributing the Burthen to more Perſons, he ought to chuſe Wiſe men fearing God*, &c, *and make Juſtices of them*: Much to the ſame purpoſe are the words of *Edward* the Firſt, in the beginning of his Book of *Laws*, written by his appointment by *John Briton*, Biſhop of *Hereford*. *We will* (ſaith he) *that our own Juriſdiction be above all the Juriſdictions of our Realm, ſo as in all manner of Felonies, Treſpaſſes, Contracts*, and *in all other Actions, Perſonal, or Real, We have power to yield ſuch Judgments as do appertain without other Proceſs, whereſoever we know the right truth as Judges.*

Nei-

Neither may this be taken to be meant of an imaginary Preſence of the King's Perſon in His Courts, becauſe he doth immediately after in the ſame place ſeverally ſet forth by themſelves the Juriſdictions of his Ordinary Courts; but muſt neceſſarily be underſtood of a Juriſdiction remaining in the King's Royal Perſon. And that this then was no New-made Law, or firſt brought in by the *Norman* Conqueſts, appears by a *Saxon* Law made by King *Edgar*, in theſe words, as I find them in Mr. *Lambert*, *Nemo in lite Regem appellato, niſi quidem domi Juſtitiam conſequi, aut impetrare non poterit, ſin ſummo jure domi urgeatur, ad Regem, ut is Onus aliqua ex parte Allevet, provocato.* *Let no man in Suit appeal to the King, unleſs he may not get Right at home; but if the Right be too heavy for him, then let him go to the King to have it eaſed.*

As the Judicial Power of Kings was exerciſed before the Conqueſt, ſo in thoſe ſetled times after the Conqueſt, wherein Parliaments were much in uſe, there was a High-Court following the King, which was the place of Soveraign Juſtice

ſtice, both for matter of Law and Conſcience, as may appear by a Parliament in *Edward* the Firſt's time, taking Order, *That the Chancellour and the Juſtices of the Bench ſhould follow the King, to the end that He might have always at hand able men for His Direction in Suits that came before Him*: And this was after the time that the Court of Common-Pleas was made Stationary, which is an Evidence that the King reſerved a Sovereign Power, by which he did ſupply the Want, or correct the Rigour of the Common Law; becauſe the *Poſitive Law*, being grounded upon that which happens for the moſt part, cannot foreſee every particular which Time and Experience brings forth.

(12.) Therefore though the Common Law be generally Good and Juſt, yet in ſome ſpecial Caſe it may need Correction, by reaſon of ſome conſiderable Circumſtance falling out, which at the time of the Law-making was not thought of. Alſo ſundry things do fall out, both in War and Peace, that require extraordinary help, and cannot wait for the Uſual Care of Common Law, the which is not

not performed, but altogether after one ſort, and that not without delay of help and expence of time; ſo that although all Cauſes are, and ought to be referred to the Ordinary Proceſſe of common Law, yet rare matters from time to time do grow up meet, for juſt Reaſons, to be referred to the aid of the abſolute Authority of the Prince; and the Statute of *Magna Charta* hath been underſtood of the Inſtitution then made of the ordinary Juriſdiction in *Common Cauſes*, and not for reſtraint of the Abſolute Authority, ſerving only in a few rare and ſingular Caſes, for though the Subjects were put to great dammage by *Falſe Accuſations* and *Malitious Suggeſtions* made to the King and His Council, eſpecially during the time of King *Edward* the Third, whilſt he was abſent in the Wars in *France*, inſomuch as in His Reign divers Statutes were made, That provided none ſhould be put to anſwer before the King and His Council without due Proceſſe; yet it is apparent the neceſſity of ſuch Proceedings was ſo great, that both before *Edward* the Third's days, and in his time, and after his Death, ſeveral Statutes were made, to help and order the Proceedings

of

of the King and his Council. As the Parliament in 28. *Edw.* 1. *Cap.* 5. did provide, *That the Chancellour and Juſtices of the King's Bench ſhould follow the King; that ſo he might have near unto him ſome that be learned in the Laws, which be able to order all ſuch matters as ſhall come unto the Court, at all times when need ſhall require.* By the Statute of 37. *Edw.* 3. *Cap.* 18. *Taliation* was ordained, in caſe the *Suggeſtion to the King proved untrue.* Then 38. *Edw.* 3. *Cap.* 9. takes away *Taliation,* and appoints Impriſonment till the King and Party grieved be ſatisfied. In the Statutes of 17. *Ric.* 2. *Cap.* 6. and 15. *Hen.* 6. *Cap.* 4. Dammages and Expences are awarded in ſuch Caſes. In all theſe Statutes it is neceſſarily implyed, that Complaints upon juſt Cauſes might be moved before the King and His Council.

At a Parliament at *Gloceſter*; 2. *Ric.* 2. when the Commons made Petition, *That none might be forced by Writ out of* Chancery, *or by Privy Seal, to appear before the King and His Council, to anſwer touching Free-hold.* The King's Anſwer was, *He thought it not reaſonable that He ſhould*

be

be conſtrained to ſend for His Leiges upon Cauſes reaſonable: And albeit He did not purpoſe that ſuch as were ſent for ſhould anſwer [Finalment] *peremptorily touching their Free-hold, but ſhould be remanded for Tryal thereof, as Law required: Provided always,* (ſaith he) *that at the Suit of the Party, where the King and His Council ſhall be credibly informed, that becauſe of Maintenance, Oppreſſion, or other Out-rages, the Common Law cannot have duly her Courſe, in ſuch caſe the Council for the Party.*

Alſo in the 13*th* year of his Reign, when the Commons did pray, that upon pain of Forfeiture, the *Chancellour* or *Council* of the King, ſhould not after the end of the *Parliament* make any Ordinance againſt the Common Law; the King anſwered, *Let it be uſed as it hath been uſed before this time, ſo as the Regality of the King be ſaved, for the King will ſave His Regalities as His Progenitors have done.*

Again, in the 4*th* year of *Henry* the Fourth, when the *Commons* complained againſt *Subpænd's*, and other Writs, grounded

ed upon falſe Suggeſtions; the King anſwered, *That He would give in Charge to His Officers, that they ſhould abſtain more than before time they had, to ſend for His Subjects in that manner. But yet* (ſaith He) *it is not Our Intention, that Our Officers ſhall ſo abſtain, that they may not ſend for Our Subjects in Matters and Cauſes neceſſary, as it hath been uſed in the time of Our Good Progenitors.*

Likewiſe when for the ſame Cauſe Complaint was made by the Commons; *Anno* 3. *Hen.* 5. the King's Anſwer was, *Le Roy s'adviſera, The King will be adviſed*; which amounts to a Denyal for the preſent, by a Phraſe peculiar for the Kings denying to paſs any Bill that hath paſſed the Lords and Commons.

Theſe Complaints of the Commons, and the Anſwers of the King, diſcover, That ſuch moderation ſhould be uſed, that the courſe of the common Law be ordinarily maintained, leſt Subjects be convented before the King and His Council without juſt cauſe, that the Proceedings of the Council-Table be not upon every ſlight Suggeſtion, nor

to

to determine finally concerning Free hold of Inheritance. And yet that upon cauſe reaſonable, upon credible Information, in matters of weight, the King's Regallity or Prerogative in ſending for His Subjects be maintain'd, as of *Right* it ought, and in former times hath been conſtantly uſed.

King *Edward* the Firſt, finding that *Bogo de Clare* was diſcharged of an Accuſation brought againſt him in *Parliament*, for that ſome formal Imperfections were found in the *Complaint*, commanded him nevertheleſs to appear before *Him* and *His Council, ad faciendum, & recipiendum quod per Regem & ejus Concilium fuerit faciendum*; and ſo proceeded to an *Examination* of the whole *Cauſe*. 8. *Edw.* 1.

Edward the Third, In the *Star-Chamber* (which was the *Ancient Council-Chamber* at *Weſtminſter*) upon the *Complaint* of *Elizabeth Audley*, commanded *James Audley* to appear before *Him* and *His Council*, and determin'd a *Controverſie* between them, touching Lands contain'd in the *Covenants* of her Joynture. *Rot. Clauſ. de an.* 41. *Ed.* 3.

Henry the Fifth, in a Suit before *Him* and *His Council* for the Titles of the Mannors of *Seere* and S. *Laurence*, in the Iſle of *Thenet*, in *Kent*, took order for the Sequeſtring the Profits till the *Right* were tryed, as well for avoiding the breach of the Peace, as for prevention of waſte and ſpoil. *Rot. Patin. Anno* 6. *Hen.* 5.

Henry the Sixth commanded the Juſtices of the Bench to ſtay the Arraignment of one *Verney* of *London*, till they had other commandment from *Him* and *His Council*, becauſe *Verney*, being indebted to the King and others, practiſed to be Indicted of Felony, wherein he might have his *Clergy*, and make his Purgation, of intent to defraud his *Creditors*. 34. *Hen.* 6. *Rot.* 37. *in Banco Regis.*

Edward the Fourth and His *Council*, in the *Star-Chamber*, heard the Cauſe of the Maſter and Poor Brethren of S. *Leonards* in *York*, complaining, that Sir *Hugh Haſtings*, and others, withdrew from them a great part of their living, which conſiſted chiefly upon the having of a Thrave

Thrave of Corn of every Plough-Land within the Counties of *York*, *Weſtmerland*, *Cumberland*, and *Lancaſhire*. *Rot. Paten. de Anno* 8. *Ed.*4. *Part* 3. *Memb.* 14.

Henry the Seventh and *His Council*, in the *Star-Chamber*, decreed, That *Margery* and *Florence Becket* ſhould Sue no further in their Cauſe againſt *Alice Radley*, widow, for Lands in *Wolwich* and *Plumſtead* in *Kent*; for as much as the Matter had been heard firſt before the Council of King *Ed.* 4. after that before the Preſident of the Requeſts of that King, *Hen.* 7. and then laſtly, before the *Council of the ſaid King.* 1. *Hen.* 7.

What is hitherto affirmed of the Dependency and Subjection of the Common Law to the Soveraign Prince, the ſame may be ſaid as well of all Statute Laws; for the King is the ſole immediate Author, Corrector, and Moderator of them alſo; ſo that neither of theſe two kinds of Laws are or can be any Diminution of that Natural Power which Kings have over their People, by right of Father-hood, but rather are an Argument to ſtrengthen the truth of

it; for Evidence whereof, we may in ſome points conſider the nature of Parliaments, becauſe in them only all Statutes are made.

(12.) Though the Name of *Parliament* (as Mr. *Cambden* ſaith) be of no great Antiquity, but brought in out of *France*, yet our Anceſtors, the *Engliſh Saxons*, had a Meeting, which they called, *The Aſſembly of the Wiſe*; termed in *Latine*, *Conventum Magnatum*, or, *Præſentia Regis*, *Procerumq*; *Prelaterumq*; *collectorum*. The Meeting of the Nobility, or the Preſence of the King, Prelates, and Peers Aſſembled; or in General, *Magnum Concilium*, or *Commune Concilium*; and many of our Kings in elder times made uſe of ſuch great Aſſemblies for to Conſult of important Affaires of State; all which Meetings, in a General ſenſe, may be termed Parliaments.

Great are the Advantages which both the King and People may receive by a well-ordered Parliament; there is nothing more expreſſeth the Majeſty and Supreme Power of a King, than ſuch an Aſſembly, wherein all his People acknowledge

knowledge him for Soveraign Lord, and make all their Addreſſes to him by humble Petition and Supplication; and by their Conſent and Approbation do ſtrengthen all the Laws, which the King, at their Requeſt and by their Advice and Miniſtry, ſhall ordain. Thus they facilitate the Government of the King, by making the Laws unqueſtionable, either to the Subordinate Magiſtrates, or refractory Multitude. The benefit which accrews to the Subject by Parliaments, is, That by their Prayers and Petitions Kings are drawn many times to redreſs their Juſt grievances, and are overcome by their importunity to grant many things which otherwiſe they would not yield unto; for the Voice of a Multitude is eaſilier heard. Many Vexations of the People are without the knowledge of the King; who in Parliament ſeeth and heareth his People himſelf; whereas at other times he commonly uſeth the Eyes and Ears of other men.

Againſt the Antiquity of Parliaments we need not diſpute, ſince the more ancient they be, the more they make for the Honour of Monarchy; yet there be

certain Circumſtances touching the Forms of Parliaments, which are fit to be conſidered.

Firſt, we are to rememember, that until about the time of the Conqueſt, there could be no Parliaments aſſembled of the General States of the whole Kingdom of *England*, becauſe till thoſe days we cannot learn it was entirely united into one Kingdom; but it was either divided into ſeveral Kingdoms, or Governed by ſeveral Laws. When *Julius Cæſar* landed he found 4 Kings in Kent; and the *Britiſh* Names of *Dammonii*, *Durotriges*, *Belgæ*, *Attrebatii*, *Trinobantes*, *Iceni*, *Silures*, and the reſt, are plentiful Teſtimonies of the ſeveral Kingdoms of *Brittains*, when the *Romans* left us. The *Saxons* divided us into 7 Kingdoms: when theſe *Saxons* were united all into a Monarchy, they had always the *Danes* their Companions, or their Maſters in the Empire, till *Edward* the *Confeſſors* Days, ſince whoſe time the Kingdom of *England* hath continued United, as now it doth: But for a Thouſand years before we cannot find it was entirely ſetled, during the Time of any one Kings Reign. As under the *Mercian*

Mercian Law: The *Weſt Saxons* were confined to the *Saxon* Laws; *Eſſex*, *Norfolk*, *Suffolk*, and ſome other Places, were vexed with *Daniſh* Laws; The *Northumbrians* alſo had their Laws apart. And until *Edward* the *Confeſſors* Reign, who was next but one before the Conquerour, the Laws of the Kingdom were ſo ſeveral and Uncertain, that he was forced to Cull a few of the moſt indifferent and beſt of them, which were from him called St. *Edwards* Laws: Yet ſome ſay that *Eadgar* made thoſe Laws, and that the *Confeſſor* did but reſtore and mend them. *Alfred* alſo gathered out of *Mulmutius* laws, ſuch as he tranſlated into the *Saxon* Tongue. Thus during the time of the *Saxons*, the Laws were ſo variable, that there is little or no likelihood to find any conſtant Form of Parliaments of the whole Kingdom.

(13) A ſecond Point conſiderable is, whether in ſuch Parliaments, as was in the *Saxon's* times, the Nobility and Clergy only were of thoſe Aſſemblies, or whether the Commons were alſo called; ſome are of Opinion, that though none of the *Saxon* Laws do

mention the Commons, yet it may be gathered by the word *Wiſemen*, the Commons are intended to be of thoſe Aſſemblies, and they bring (as they conceive) probable arguments to prove it, from the Antiquity of ſome Burroughs that do yet ſend Burgeſſes, and from the Proſcription of thoſe in *Antient Demeſne*, not to ſend Burgeſſes to Parliament. If it be true, that the *Weſt-Saxons* had a Cuſtom to aſſemble Burgeſſes out of ſome of their Towns, yet it may be doubted, whether other Kingdoms had the ſame uſage; but ſure it is, that during the Heptarchy, the People could not Elect any Knights of the Shire, becauſe *England* was not then divided into Shires.

On the contrary, there be of our Hiſtorians who do affirm, that *Henry* the Firſt cauſed the Commons firſt to be Aſſembled by Knights and Burgeſſes of their own Appointment, for before his Time only certain of the Nobility and Prelates of the Realm were called to Conſultation about the moſt Important Affairs of State. If this Aſſertion be true, it ſeems a meer matter of Grace of this King,

King, and proves not any Natural Right of the People, Originally to be admitted to chuſe their Knights and Burgeſſes of Parliament, though it had been more for the Honour of Parliaments, if a King, whoſe Title to the Crown had been better, had been Author of the Form of it; becauſe he made uſe of it for his unjuſt Ends. For thereby he ſecured himſelf againſt his Competitor and Elder Brother, by taking the Oaths of the Nobility in Parliament; and getting the Crown to be ſetled upon his Children. And as the King made uſe of the People, ſo they, by Colour of Parliament, ſerved their own turns; for after the Eſtabliſhment of Parliaments by ſtrong hand, and by the Sword, they drew from him the *Great Charter*, which he granted the rather to flatter the Nobility and People, as Sir *Walter Raleigh* in his *Dialogue* of *Parliaments* doth affirm, in theſe words. *The great Charter was not Originally granted Legally and Freely; for* Henry *the Firſt did but Uſurp the Kingdom, and therefore, the better to aſſure himſelf againſt* Robert *his Elder Brother, he flattered the Nobility and People with their Charters; yea, King* John, *that Confirmed them,*

them, had the like reſpect, for Arthur *Duke of* Brittain *was the undoubted Heir of the Crown, upon whom King* John *Uſurped*, and *ſo to conclude, theſe* Charters *had their Original from Kings* de facto, *but not* de jure —— *the Great Charter had firſt an obſcure Birth by Uſurpation*, and *was Secondly foſtered and ſhewed to the World by Rebellion.*

(15.) A third conſideration muſt be, that in the former Parliaments, inſtituted and continued ſince King *Henry* the Firſt's time, is not to be found the Uſage of any Natural Liberty of the People; for all thoſe Liberties that are claimed in Parliament are the liberties of Grace from the King, and not the Liberties of Nature to the People; for if the liberty were Natural, it would give Power to the Multitude to aſſemble themſelves *When* and *Where* they pleaſe, to beſtow Soveraignty, and by Pactions to limit and direct the Exerciſe of it. Whereas, the Liberties of Favour and Grace, which are Claimed in Parliaments, are reſtrained both for Time, Place, Perſons, and other Circumſtances, to the Sole Pleaſure of the King. The People cannot

not Aſſemble themſelves, but the King, by his Writs, calls them to what place he pleaſes; and then again Scatters them with his Breath at an inſtant, without any other Cauſe ſhewed than his Will. Neither is the whole Summoned, but only ſo many as the Kings Writs appoint. The prudent King *Edward* the Firſt, ſummoned always thoſe Barons of ancient Families, that were moſt wiſe, to his Parliament, but omited their Sons after their Death, if they were not anſwerable to their Parents in Underſtanding. Nor have the whole people Voices in the Election of Knights of the Shire or Burgeſſes, but only Free-holders in the Counties, and Freemen in the Cities and Burroughs; yet in the City of *Weſtminſter* all the Houſe-holders, though they be neither Free-men nor Free-holders, have Voices in their Election of Burgeſſes. Alſo during the time of Parliament, thoſe priviledges of the Houſe of *Commons*, of freedom of Speech, Power to puniſh their own Members, to examine the Proceedings and Demeanour of Courts of Juſtice and Officers, to have acceſs to the King's Perſon, and the like, are not due by any

any Natural Right, but are derived from the Bounty or Indulgence of the King, as appears by a ſolemn Recognition of the Houſe; for at the opening of the Parliament, when the Speaker is preſented to the King, he, in the behalf and name of the whole Houſe of Commons, humbly craves of His Majeſty, That He would be pleaſed to grant them their *Accuſtomed Liberties* of freedom of Speech, of acceſs to his Perſon, and the reſt. Theſe Priviledges are granted with a Condition implyed, That they keep themſelves within the Bounds and Limits of Loyalty and Obedience; for elſe why do the Houſe of *Commons* inflict puniſhment themſelves upon their own Members for tranſgreſſing in ſome of theſe points; and the King, as Head, hath many times puniſhed the Members for the like Offences. The Power which the King giveth, in all his Courts, to his Judges or others to puniſh, doth not exclude Him from doing the like, by way of *Prevention, Concurrence,* or *Evocation,* even in the ſame point which he hath given in charge by a delegated Power; for they who give Authority by Commiſſion, do always retain more than they

they grant: Neither of the two Houſes claim an *Infallibility* of not *Erring*, no more than a General Council can. It is not impoſſible but that the greateſt may be in Fault, or at leaſt Intereſted or Engaged in the *Delinquency* of one *particular Member*. In ſuch Caſes it is moſt proper for the Head to correct, and not to expect the *Conſent* of the *Members*, or for the Parties peccant to be their own Judges. Nor is it needful to confine the King, in ſuch Caſes, within the Circle of any one Court of Juſtice, who is Supreme Judge in all Courts. And in rare and new Caſes rare and new Remedies muſt be ſought out; for it is a *Rule* of the *Common Law*, *In novo Caſu, novum Remedium eſt apponendum:* and the *Statute* of *Weſtminſt.* 2. *cap.* 24. giveth *Power*, even to the *Clarks* of the *Chancery*, to make *New Forms* of *Writs* in *New Caſes*, leſt any man that came to the *King's Court* of *Chancery* for help, ſhould be ſent away without *Remedy*: A *Preſident* cannot be found in *every Caſe*; and of things that happen ſeldom, and are not common, there cannot be a *Common Cuſtom*. Though *Crimes Exorbitant* do poſe the *King* and *Council* in finding

ing a *Preſident* for a *Condigne Puniſhment*, yet they muſt not therefore paſs unpuniſhed.

I have not heard that the people, by whoſe Voices the Knights and Burgeſſes are choſen, did ever call to an account thoſe whom they had Elected; they neither give them Inſtructions or Directions what to ſay, or what to do in Parliament, therefore they cannot puniſh them when they come home for doing amiſs: If the people had any ſuch power over their Burgeſſes, then we might call it, The Natural Liberty of the people, with a miſchief. But they are ſo far from puniſhing, that they may be puniſhed themſelves for intermedling with Parliamentary Buſineſs; they muſt only chuſe, and truſt thoſe whom they chuſe to do what they liſt; and that is as much liberty as many of us deſerve, for our irregular Elections of Burgeſſes.

(15) A fourth point to be conſider'd, is, that in Parliament all Statutes or Laws are made properly by the King alone, at the Rogation of the people, as His Majeſty King *James*, of happy memory,

mory, affirms in His true Law of free Monarchy; and as *Hooker* teacheth us, *That Laws do not take their conſtraining force from the Quality of ſuch as deviſe them, but from the Power that doth give them the Strength of Laws: Le Roy le Veult*, the King will have it ſo, is the Interpretive Phraſe pronounced at the King's paſſing of every Act of Parliament: And it was the ancient Cuſtom for a long time, till the days of *Henry* the Fifth, that the Kings, when any Bill was brought unto them, that had paſſed both Houſes, to take and pick out what they liked not, and ſo much as they choſe was Enacted for a Law: but the Cuſtom of the later Kings hath been ſo gracious, as to allow always of the entire Bill as it hath paſſed both Houſes.

(16) The *Parliament* is the King's Court, for ſo all the oldeſt Statutes call it, the King in his *Parliament*: But neither of the two Houſes are that Supreme Court, nor yet both of them together; they are only Members, and a part of the Body, whereof the King is the Head and Ruler. The King's Governing of this Body of the *Parliament*

we may find moſt ſignificantly proved both by the Statutes themſelves, as alſo by ſuch *Preſidents* as expreſly ſhew us, how the King, ſometimes by himſelf, ſometimes by his Council, and other-times by his Judges, hath over-ruled and directed the Judgments of the Houſes of *Parliament*; for the King, we find that *Magna Charta*, and the *Charter* of *Forreſts*, and many other Statutes about thoſe times, had only the Form of the Kings Letters-Patents, or Grants, under the Great Seal, teſtifying thoſe *Great Liberties* to be the ſole Act and Bounty of the King: The words of *Magna Charta* begin thus; Henry, *by the Grace of God*, &c. *To all Our Arch-Biſhops*, &c. *and Our Faithful Subjects, Greeting. Know ye, that We, of Our meer free-Will, have granted to all Free-men theſe Liberties.* In the ſame ſtyle goeth the *Charter* of *Forreſts*, and other Statutes. *Statutum Hiberniæ*, made at *Weſtminſter*, 9. *Februarii* 14. *Hen.* 3. is but a Letter of the King to *Gerrard*, Son of *Maurice*, Juſtice of *Ireland*. The Statute *de anno Biſſextili* begins thus, *The King to His Juſtices of the Bench, Greeting*, &c. *Explanationes Statuti Gloceſtriæ*, made

made by *the King and his Juſtices only*, were received always as Statutes, and are ſtill Printed amongſt them.

The Statute made for Correction of the 12 th Chapter of the Statute of *Gloceſter*, was Signed under the Great Seal, and ſent to the Juſtices of the Bench, after the manner of a Writ Patent, with a certain Writ cloſed, dated by the Kings Hand at *Weſtminſter*, requiring that *they ſhould do, and Execute all and every thing contained in it, although the ſame do not accord with the Statute of* Gloceſter *in all things.*

The Statute of *Rutland*, is the Kings Letters to his *Treaſurer* and *Barons* of his *Exchequer*, and to his *Chamberlain.*

The Statute of *Circumſpecte Agis* runs, *The King to his Judges ſendeth Greeting.*

There are many other Statutes of the ſame Form, and ſome of them which run only in the Majeſtique Terms of, *The King Commands*, or, The *King Wills*, or, *Our Lord the King hath eſtabliſhed*,

or, *Our Lord the King hath ordained*: or, *His Especial Grace hath granted*: Without mention of Consent of the Commons or People; insomuch that some Statutes rather resemble Proclamations, than Acts of Parliament: And indeed some of them were no other than meer Proclamations; as the *Provisions* of *Merton*, made by the King at an Assembly of the *Prelates* and Nobility, for the *Coronation* of the King and his Queen *Eleanor*, which begins, *Provisum est in Curia Domini Regis apud Merton.* Also a *Provision* was made 19. *Hen.* 3. *de Assisa ultimæ Præsentationis*, which was continued and allowed for Law, until *Tit. West.* 2. *an.* 13. *Ed.* 1. *cap.* 5. which provides the contrary in expres words: This Provision begins, *Provisum fuit coram Dom. Rege, Archiepiscopis, Episcopis, & Baronibus, quod*, &c. It seems Originally the difference was not great between a *Proclamation* and a *Statute*; this latter the King made by *Common Council* of the Kingdom. In the former he had but the advice only of his great *Council* of the *Peers*, or of his Privy Council only. For that the King had a great Council, besides his Parliament, appears by a Record of 5. *Hen.* 4. about

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an Exchange between the *King* and the Earl of *Northumberland*: Whereby the *King* promiſeth to deliver to the *Earl* Lands to the value, by the advice of Parliament, or otherwiſe by the Advice of his Grand Council, and other Eſtates of the Realm, which the King will Aſſemble, in caſe the Parliament do not meet.

We may find what Judgment in later times Parliaments have had of Proclamations, by the Statute of 31. of *Hen. Cap.* 8. in theſe Words, *Foraſmuch as the King, by the advice of his Council, hath ſet forth Proclamations, which obſtinate Perſons have contemned; not conſidering what a King by his Royal Power may do: Conſidering that ſudden Cauſes and Occaſions fortune many times, which do require ſpeedy Remedies, and that by abiding for a Parliament, in the mean time might happen great prejudice to enſue to the Realm: And weighing alſo, that his Majeſty, which by the Kingly and Regal Power given him by* God, *may do many things in ſuch Caſes, ſhould not be driven to extend the Liberties, and Supremity of his Regal Power, and Dignity, by*

willfulneſs of froward Subjects: It is therefore thought fit, that the King with the Advice of his Honourable Council ſhould ſet forth Proclamations for the good of the People, and defence of his Royal Dignity as neceſſity ſhall require.

This Opinion of a Houſe of Parliament was confirmed afterwards by a Second Parliament, and the Statute made *Proclamations* of as great validity, as if they had been made in *Parliament*. This Law continued until the Government of the State came to be under a Protector, during the Minority of *Edward* the Sixth, and in his firſt year it was Repealed.

I find alſo, that a *Parliament* in the 11th year of *Henry* the Seventh, did ſo great Reverence to the Actions, or Ordinances of the King, that by Statute they provided a Remedy or Means to levy a *Benevolence* granted to the King, although by a Statute made not long before all Benevolences were Damned and Annulled for ever.

Mr. *Fuller*, in his Arguments againſt the

the proceedings of the High-Commiſſion Court, affirms, that the Statute of 2. *H.* 4. *cap.* 15. which giveth *Power* to Ordinaries to Impriſon and ſet Fines on Subjects, was made without the Aſſent of the Commons, becauſe they are not mentioned in the Act. If this Argument be good, we ſhall find very many Statutes of the ſame kind, for the Aſſent of the Commons was ſeldom mentioned in the Elder *Parliaments*. The moſt uſual Title of *Parliaments* in *Edward* the 3d, *Rich.* 2. the three *Henries* 4. 5. 6. in *Edw.* 4. and *Rich.* 3. days, was: *The King and his Parliament, with the Aſſent of the Prelates, Earles,* and *Barons, and at the Petition, or at the ſpecial Inſtance of the Commons, doth Ordain.*

The ſame Mr. *Fuller* ſaith, that the Statute made againſt *Lollards*, was without the Aſſent of the Commons, as appears by their Petition in theſe Words, *The Commons beſeech, that whereas a Statute was made in the laſt Parliament,* &c. *which was never Aſſented nor Granted by the Commons, but that which was done therein, was done without their Aſſent.*

(17.) How far the Kings Council hath directed and ſwayed in Parliament, hath in part appeared by what hath been already produced. For further Evidence, we may add the Statute of *Weſtminſter*: The firſt which ſaith, *Theſe be the Acts of King* Edward 1. *made at His Firſt Parliament General, by His Council, and by the aſſent of Biſhops, Abbots, Priors, Earles, Barons, and all the Commonalty of the Realm*, &c. The Statute of *Bygamy* ſaith, *In preſence of certain Reverend Fathers, Biſhops of* England, *and others of the Kings Council, for as much as all the King's Council, as well Juſtices as others, did agree, that they ſhould be put in Writing, and obſerved.* The Statute of *Acton Burnell* ſaith, *The King, for Himſelf, and by His Council, hath Ordained and Eſtabliſhed.*

In Articuli ſuper Chartas; when the Great Charter was confirmed, at the Requeſt of his Prelates, Earls and Barons, we find theſe Paſſages. 1. *Nevertheleſs the King and His Council do not intend by reaſon of this Statute to diminiſh the Kings Right*, &c. 2. *And notwithſtanding all theſe things before-mentioned, or any part of*

of them; both the King and his Council, and all they that were preſent at the making of this Ordinance, will and intend that the Right and Prerogative of his Crown ſhall be ſaved to him in all things. Here we may ſee in the ſame Parliament the *Charter* of the Liberties of the Subjects confirmed, and a ſaving of the Kings Prerogative: Thoſe times neither ſtumbled at the Name, nor conceived any ſuch *Antipathy* between the Terms, as ſhould make them incompatible.

The Statute of *Eſcheators* hath this Title, *At the Parliament of our Soveraign Lord the King, by his Council it was agreed; and alſo by the King himſelf commanded.* And the Ordinance of Inqueſt goeth thus, *It is agreed and Ordained by the King himſelf, and all his Council.*

The Statute made at *York*, 9. *Ed.* 3. ſaith, *Whereas the Knights, Citizens, and Burgeſſes deſired our Soveraign Lord the King in his Parliament, by their Petition, that for his Profit, and the Commodity of his Prelates, Earls, Barons, and Commons, it may pleaſe him to provide remedy; our Soveraign Lord the King deſiring*

the profit of his people by the aſſent of his Prelates, Earles, Barons, and other Nobles of his Council being there, hath ordained.

In the Parliament *primo Edwardi* the Third, where *Magna Charta* was confirmed, I find this Preamble, *At the Requeſt of the Commonalty by their Petition made before the King and His Council in Parliament, by the aſſent of the Prelates, Earles, Barons, and other Great Men Aſſembled, it was Granted.*

The *Commons* preſenting a Petition unto the King, which the King's Council did miſlike, were content thereupon to mend and explain their Petition; the Form of which Petition is in theſe words, *To their moſt redoubted Soveraign Lord the King, praying the ſaid Commons, That whereas they have pray'd Him to be diſcharged of all manner of Articles of the* Eyre, &c. *Which Petition ſeemeth to His Council to be prejudicial unto Him, and in Diſinheriſon of His Crown, if it were ſo generally granted. His ſaid Commons not willing nor deſiring to demand things of Him, which ſhould fall in Diſinheriſon of Him*

Him or His Crown perpetually, as of Eſcheators, &c. *but of Treſpaſſes, Miſpriſions, Negligences, and Ignorances,* &c.

In the time of *Henry* the Third, an *Order* or *Proviſion* was made by the *King's Council,* and it was pleaded at the *Common Law* in *Bar* to a *Writ* of *Dower.* The *Plantiffs Attorney* could not deny it, and thereupon the *Judgment* was *ideo ſine die.* It ſeems in thoſe days an *Order* of the *Council-Board* was either parcel of the *Common-Law* or above it.

The Reverend Judges have had regard in their *Proceedings,* that before they would reſolve or give *Judgment* in new Caſes, they conſulted with the *King's Privy Council.* In the Caſe of *Adam Brabſon,* who was aſſaulted by *R. W.* in the preſence of the *Juſtices* of *Aſſize* at *Weſtminſter,* the Judges would have the *Advice of the Kings Council*: For in a like Caſe, becauſe *R. C.* did ſtrike a Juror at *Weſtminſter* which paſſed in an *Inqueſt* againſt one of his Friends, *It was adjudged by all the Council that his right hand ſhould be cut off, and his Lands and Goods forfeited to the King.*

Green

Green and *Thorp* were ſent by Judges of the Bench to the *Kings Council*, to demand of them whether by the *Statute* of 14. *Ed.* 3. *cap.* 16. a *Word* may be amended in a Writ; and it was anſwered, that a *Word* may well be amended, although the *Statute* ſpeak but of a *Letter* or *Syllable*.

In the Caſe of Sir *Tho. Oghtred*, Knight, who brought a *Formedon* againſt a poor Man and his Wife; they came and yielded to the *Demandant*, which ſeemed ſuſpitious to the Court, whereupon *Judgment* was ſtayed; and *Thorp* ſaid, *That in the like Caſe of* Giles Blacket, *it was ſpoken of in Parliament, and we were commanded, that when any like Caſe ſhould come, we ſhould not go to Judgment without good advice*: therefore the Judges Concluſion was, *Sues au Counſeil, & comment ils voillet que nous devomus faire, nous volume faire, & auterment nient en ceſt caſe. Sue to the Council, and as they will have us to do, we will; and otherwiſe not in this Caſe.*

(18.) In

(18.) In the laſt place, we may conſider how much hath been attributed to the Opinions of the *Kings Judges* by Parliaments, and ſo find, that the *Kings Council* hath guided and ruled the *Judges*, and the *Judges* guided the Parliament.

In the *Parliament* of 28. *Hen.* 6. The Commons made Suit, *That* William de la Poole, *D. of* Suffolke, *ſhould be committed to Priſon, for many Treaſons and other Crimes. The Lords of the Higher Houſe were doubtful what Anſwer to give, the Opinion of the Judges was demanded. Their Opinion was, that he ought not to be committed, for that the Commons did not charge him with any particular Offence, but with General Reports and Slanders.* This Opinion was allowed.

In another Parliament, 31. *Hen.* 6. (which was prorogued) in the Vacation *the Speaker of the Houſe of Commons* was condemned in a thouſand pound dammages, in an Action of Treſpaſs, and was committed to Priſon in Execution for the ſame. When the Parliament was re-aſſembled, the *Commons* made ſuit to the King and Lords to have their Speaker delivered; the Lords demanded the Opini-

Opinion of the Judges, whether he might be delivered out of Priſon by priviledge of Parliament; upon the Judges anſwer it was concluded, *That the Speaker ſhould ſtill remain in Priſon, according to the Law, notwithſtanding the priviledge of Parliament, and that he was the Speaker:* Which Reſolution was declared to the *Commons* by *Moyle*, the King's Serjeant at Law; and the *Commons* were commanded in the Kings Name, by the Biſhop of *Lincolne*, (in the abſence of the Arch-biſhop of *Canterbury*, then Chancellour) to chuſe another Speaker.

In ſeptimo of *Hen.* 8. a queſtion was moved in *Parliament*, *Whether Spiritual Perſons might be convented before Temporal Judges for Criminal Cauſes.* There Sir *John Fineux*, and the other Judges, delivered their Opinion, *That they might and ought to be: and their Opinion was allowed and maintained by the King and Lords, and Dr.* Standiſh, *who before had holden it; the ſame Opinion was delivered from the Biſhops.*

If a Writ of Errour be ſued in *Parliament* upon a Judgment given in the *Kings Bench*,

Bench, the Lords of the higher Houſe alone, (without the *Commons*) are to examine the Errours; the Lords are to proceed according to Law, and for their Judgment therein they are to be informed by the advice and counſel of the Judges, who are to inform them what the *Law* is, and ſo to direct them in their Judgment; for the Lords are not to follow their own Opinions or Diſcretions otherwiſe. So it was in a Writ of Errour brought in *Parliament* by the *Dean* and *Chapter* of *Lichfield*, againſt the *Prior* and *Covent* of *Newton-Panel*, as appeareth by Record. See *Flower Dew's Caſe*, *P.* 1. *H.* 7. *fol.* 19.

FINIS.